Public Utilities

FORTNIGHTLY

December 6, 1945

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PUBLISHERS

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Public Utilities Fortnightly

VOLUME XXXVI *December 6, 1945* NUMBER 12

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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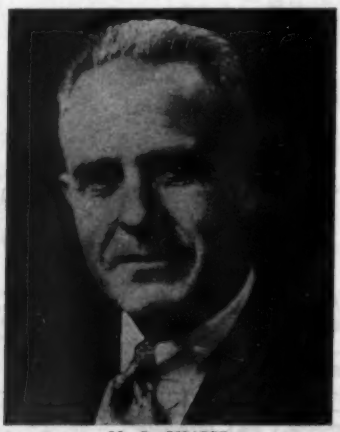
Pages with the Editors

LECTURING the rising generation is one of the traditional prerogatives of the "sitting" generation and has never been taken too seriously by either generation. But the recent defeat of the hitherto invincible American battleship *Missouri* at the hands of some 60,000 New York city school children, and many of their more irresponsible elders, is something which every experienced public utility property operator will understand most sympathetically.

HERE was a sterling ship which braved the horrors of the Kamikazes, the mine fields of the Pacific, and the numerous other dire perils of honorable maritime warfare. She emerged from these virtually unscathed, only to fall prey to a horde of doodlers, whittlers, chiselers, and downright vandals who came aboard equipped with screw drivers, pliers, and wrenches—all presumably citizens or prospective citizens of the *Missouri's* own government. Initials were wantonly gouged in deck enamel, upon gun casings, and an attempt was even made to remove the sacred plaque mounted on the spot of the historic surrender of the Japanese government to the American armed forces in Tokyo bay.



M. O. SHARPE

Actual development of the Missouri river is the important thing; administrative organization is secondary.

(SEE PAGE 754)

LYLE H. BOREN

The splendid mission of REA must not be compromised by letting it get off the track.

(SEE PAGE 745)

As *The New York Times* observed editorially, it is almost an impossible task for authorities to estimate the number of vandals in a crowd of the size (almost three-quarter million) which boarded the *USS Missouri* as sight-seeing guests during her Navy Day stay in New York harbor. But the percentage runs uncommonly high in our larger American cities and the phenomenon of congenital vandalism seems to be largely, although by no means exclusively, American. School authorities have waged war for years against the destruction of public property by juvenile hoodlums.

PUBLIC utility companies have had to cope with this problem for years. There isn't a telephone company or rural power utility of any size at all in the United States which does not write off with monotonous regularity losses incurred through the replacement of street lights, insulators, transformers, and pole-line equipment generally.

WHY is it that so-called sportsmen, who are not marksmen enough to hit ducks, deers,

pheasants, rabbits, *et al.*, must take out their spleen by using inoffensive pole lines as targets? One is tempted to generalize that the true sportsman would be ashamed of his own failure to hit legitimate targets and that only rank amateurs would ever behave in such childish fashion.

THE most unfortunate consequence of such behavior is not the expense of replacing street lamps, insulators, and so forth, considerable though the sum may be. It is the public discomfort and even dangerous results of service interruptions. In rural areas, human life itself can be jeopardized through such malicious severing of communications lines and disruption of power supply.

THE suggestion above that such vandalism is a predominantly American trait may in turn suggest that the remedy might lie in mastering certain defects in American educational and disciplinary methods. American telephone men who have traveled to Europe have commented with wonder about the freshly painted telephone booths one sees in Switzerland, recalling the costly quest which the telephone industry in the United States made for "doodleproof" steel linings for telephone pay stations in this country.

IN prewar France one had only to look at the volume of defacing scrawls and initials in such places as railway stations, Notre Dame Cathedral, Arc de Triomphe, and the palace at Versailles to see that they were largely the handicraft of American tourists, who often shamelessly added their place of origin, such as Boston, Pittsburgh, Chicago, etc.

WE are honored in this issue to present as contributors both the governor and a United States Representative in Congress of two great sovereign states. They are GOVERNOR M. Q. SHARPE of South Dakota, whose article on the proposed Missouri Valley Authority begins on page 754, and LYLE H. BOREN of Oklahoma, whose article on the Rural Electrification Administration opens the issue.

GOVERNOR SHARPE was born in Marysville, Kansas, in 1888 and received his early education in that state. Prior to taking a law degree at the University of South Dakota (LLB, '14), he had served a hitch in the U. S. Navy as a chief yeoman on the old presidential yacht, *USS Mayflower*. Subsequently he served in World War I as a U. S. Army Corporal. His professional life began as state's attorney for Lyman county, 1916 to 1920, followed by private practice, culminating in his becoming attorney general of South Dakota from 1929 to 1933. After more active legal practice, as well as farming, our contributor was elected governor of South Dakota beginning January 5, 1943. He has always been interested in navigation, irrigation, and river developments generally connected with the Missouri, and is chairman of the Missouri River States Committee, members of which are the governors of states in that river basin.

W. D. GAY

We must not be too hasty in putting air lines in the strait jacket of conventional regulation.

(SEE PAGE 760)

REPRESENTATIVE BOREN was born in Texas in 1909, but after somewhat precocious progress through Central Teachers College at Ada, Oklahoma (BA, '30), and as a graduate student of Oklahoma Agriculture and Mechanical College, he began teaching school at Wolf, Oklahoma, and became associated with the U. S. Treasury Department in 1935. He was elected to the 75th Congress from the fourth district of Oklahoma in 1936 when he was but twenty-seven years of age and has since been reëlected to the same seat in every subsequent Congress. His article is based in substance on his recent testimony before the public power subcommittee of the House Interstate and Foreign Commerce Committee. He is also a member of that committee in charge of a subcommittee investigating the effectiveness of the Holding Company Act.

W. D. GAY, whose article on the proposed regulation of air-line securities begins on page 760, has recently returned to the natural gas industry after some brief service with one of the larger commercial air lines. MR. GAY, who is a Harvard graduate, and was for many years associated with Standard Statistics Company, New York, will be recalled by our readers for his previous thought-provoking contributions on the subject of natural gas regulation.

THE next number of this magazine will be out December 20th.

The Editors

In This Issue

In Feature Articles

In Financial News

In What Others Think

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 257–320, from 60 PUR(NS)

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

EDITORIAL STATEMENT
The Wall Street Journal.

"The only way to prevent the use of the atomic bomb is to prevent war."

HARLEY L. LUTZ
Professor, Princeton University.

"Simple recipe for prosperity: If you want to make a dollar by any honest means you are free to try, and if you succeed you may keep it."

IRA MOSHER
President, National Association of Manufacturers.

"We must fashion our labor laws to end special privileges for a fourth of our national labor force at the expense of the other three-fourths."

DONALD R. RICHBERG
Economist.

"It would be strange if, as a leading apostle of international peace, the United States were compelled to confess itself unable to preserve domestic peace."

IRA N. GABRIELSEN
Director, Fish and Wildlife Service.

"What happens in the Missouri river valley will have more effect on the wild life of the nation than what happens in any other river valley in the United States."

WINTHROP M. ALDRICH
President, International Chamber of Commerce.

"Let us struggle to achieve the type of world we think will best serve the interests of mankind and not take the defeatist attitude that totalitarian controls are inevitable."

G. METZMAN
President, New York Central Railroad.

"It would be entirely possible for the competition of tax-subsidized transportation so to undermine America's railroads that the government would have to take them over."

Excerpt from statement of executive council, American Federation of Labor.

"The degree of prosperity which we shall have in this country following this war depends almost wholly upon the degree of success which labor achieves in its demands for higher wages."

FRANCIS CASE
U. S. Representative from South Dakota.

"There is no desirable end of purpose in the proposed [MVA] measure that cannot be accomplished under existing legislation and authority. My people are getting a little tired of having their lives regimented to the extent of some provisions, such as for social planning development."

GLEN H. TAYLOR
U. S. Senator from Idaho.

"I do not feel a CVA will take away any rights, or regiment the people, any more than under our existing Federal departments which now carry on the activities of developing and controlling our natural resources."

EDITORIAL STATEMENT
The Hartford (Connecticut) Courant.

". . . to argue that electrical energy from government plants is cheap energy because of rates prevailing in the Tennessee Valley Authority is to drag a really bright red herring across the trail. The TVA 'yardstick' has been proved time and again to be a phony."

LEO CROWLEY
Former Foreign Economic Administrator.

"I am convinced that habitual and extensive use of public investment as a device to maintain employment in the economic system will lead to the disappearance of the free, private enterprise, economic system which has achieved the economic prosperity of modern times."

JOHN C. VIVIAN
Governor of Colorado.

"Authorities are devised as instruments to accomplish a planned economy which by-passes our constitutional system. They represent a welding of economic and political power which sidesteps the powers and functions of the individual states and of existing Federal departments."

HERBERT HOOVER
Former President of the United States.

"No one has a 'right' to a job. The most we have under the traditional guaranties of the republic is a right to an opportunity. We can have guaranteed employment, but it must be found in the healthy stabilization of our economy, not imposed on it arbitrarily by executive order."

EDITORIAL STATEMENT
The New York Times.

"The advantages that urbanites take for granted are still to be realized by many farm families. More than 89 per cent of the farmhouses do not have bathtubs, 85 per cent lack mechanical refrigerators, 80 per cent have no running water, 69 per cent lack electric lights, 40 per cent have no radios."

CARROLL B. HUNTRESS
Chairman, New York State Conference in Opposition to the St. Lawrence Project.

". . . utilization of atomic energy for power, which eminent engineers foresee within twenty years, would make obsolescent such hydroelectric projects as that proposed for the St. Lawrence river. Were any additional argument required against this billion-dollar-plus scheme, it lies in our entry into the atomic age."

EDITORIAL STATEMENT
News letter of the First National Bank of Boston.

"American capitalism is an oasis in a world gone leftward. But this is not the first time that our country has been placed in an isolated rôle. As a matter of fact, our private enterprise system and our democratic form of government are the outgrowth of dissatisfaction with the tyrannies of the old world."

2 *MORE** MILLION-POUND

Photographs taken during erection give shape to, and help clarify, the setting drawing of these B&W Open-Pass Boilers shown on the opposite page.

1. **Lower header of rear wall and baffle wall**
2. **30-inch lower drum receiving circulating water from the upper 72-inch steam-and-water drum 5**
3. **Floor tubes of the primary furnace in place—these are continuation of the front furnace wall tubes**
4. **Tubes in place for burner section of furnace front wall**
5. **Fully studded section of primary furnace in combustion zone—when completed, this section will be covered by plastic chrome ore**
6. **Tangent bare tubes in side wall of open-pass section of furnace**
7. **Bare tubes with flat studs between in lower section of side wall in open-pass section of furnace**

TO EXPAND system capacity and improve fuel economy, the Consolidated Edison Company of New York is now installing a 65,000-Kw. topping turbine and two B&W 1,000,000 lb.-per-hour Open Pass Boilers at its Hell Gate Station, world's second largest steam power station.

These boilers are being installed in the floor space formerly occupied by twelve stoker-fired, straight-tube, 275-psi units, and will deliver nearly twice as much steam per hour as the twelve units they replace.

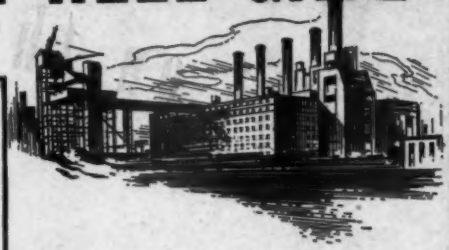
The new steam generators are designed for pulverized-coal firing in slag-tap furnaces. These and other features are shown by the drawing on the opposite page.

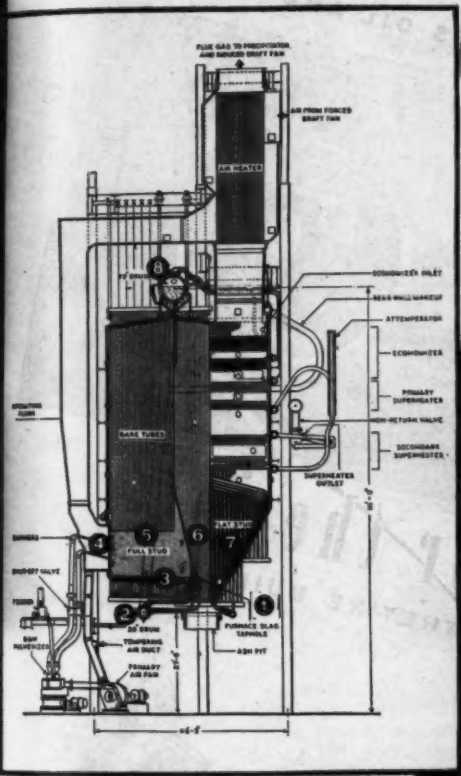
This Hell Gate modernization project is another example of boiler selection being strongly influenced by long and satisfactory past experience with the economy and efficiency of B&W equipment. It is patterned after a similar successful topping installation including B&W boilers, at Consolidated Edison's Waterside Station.

B&W has been successfully serving the nation's electric light and power industry since its very beginning . . . designing, fabricating, and applying steam-generating equipment for every combination of operating conditions. This broad experience is at your disposal now in building tomorrow's efficiency into today's steam power plants.

* Two other million-pound B&W Boilers have been in service in this plant since 1930, tests of which are given in ASME paper presented by W. E. Caldwell, June, 1933, "Characteristics of the Twin-Set Hell Gate Boilers".

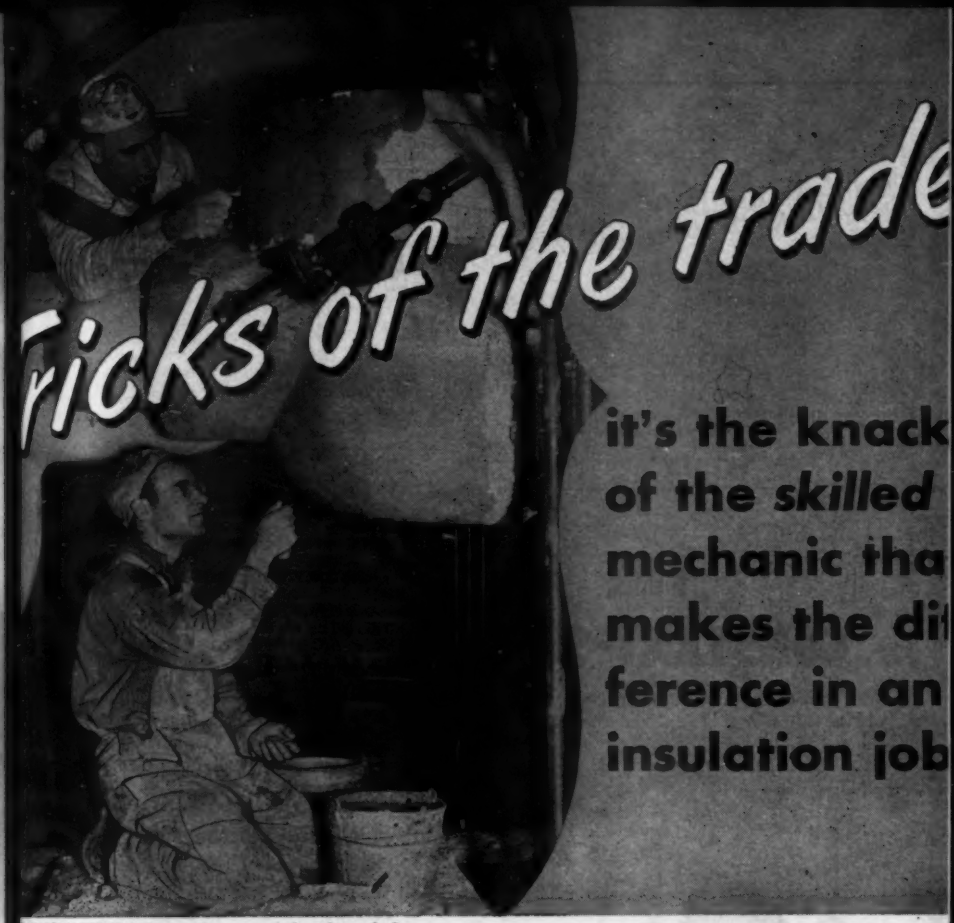
BOILERS FOR HELL GATE





⑧ Looking up at 72-inch upper drum shortly after it was hoisted into place. Tube holes are for tubes of the front wall, division wall between the furnace sections and the open-pass, and baffle wall between the open-pass and the gas pass containing the superheater and the economizer. ▼

Two 1,000,000 lb.-per-hr. 900 psi, 950 F B&W Open Pass Boilers of this design are being installed at Hell Gate Station. Each boiler is served by four B&W Type E Pulverizers. Numbers on drawing refer to captions on opposite page.



KNOW HOW help another steam plant keep fuel ... this time using two types of J-M insulations.

RE is an art in properly applying insula-ns—and only specialists know the many ractices that make for success. Lack of this dge may greatly reduce the value of your on investment.

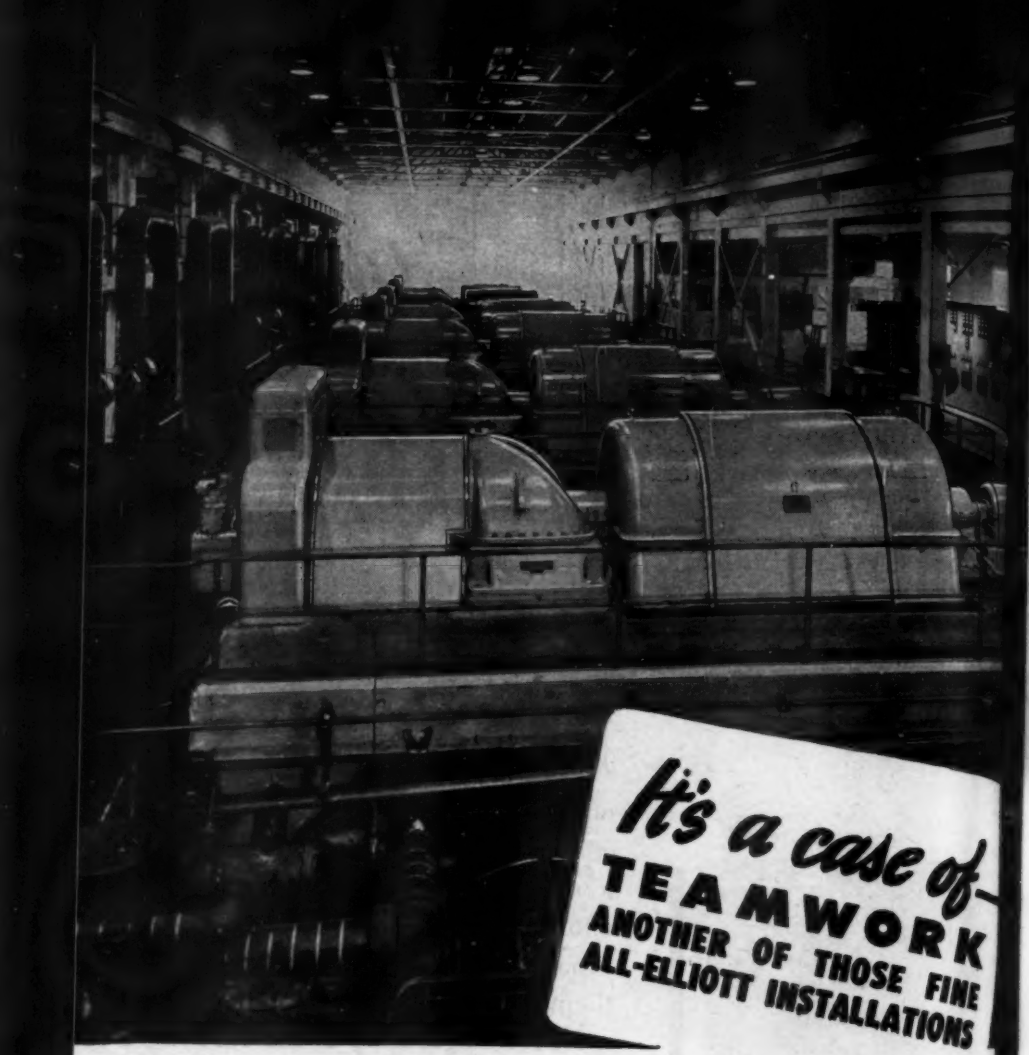
ermanent heat control and fuel savings, Manville places at your disposal a trained expert workmen and engineers—a nation-ganization capable of handling all details sulation job and taking complete respon-from planning through application.

me areas, J-M's own construction forces dy to help you. In others, J-M Technical Units have been created by selecting contracting companies of proved reliability and cialized experience in this field.

These Insulation Specialists, backed by yea insulation research and practical experience, able to choose the right insulating material for from a complete line of insulations. They sp the right thickness, the right bond or joint for every industrial temperature, every ser requirement.

All are important reasons why J-M may be to solve your next insulating problem ... more quickly, *safely!* For further information, write Johns-Manville, 22 East 40th Street, New York 16, N. Y.

HNS-MANVILL First in INSULATION



Vital wartime power needs were supplied by this line of rugged, smooth-operating Elliott turbine-generator units, each served by its Elliott surface condenser.

In an installation like this, highest operating results can be taken for granted. It's a case of team-work. The Elliott units are actually designed together, built togther, and when installed each clicks into its proper place without modification or compromise. Plants like these are a source of pride to their builders, and of gratification to their operators.

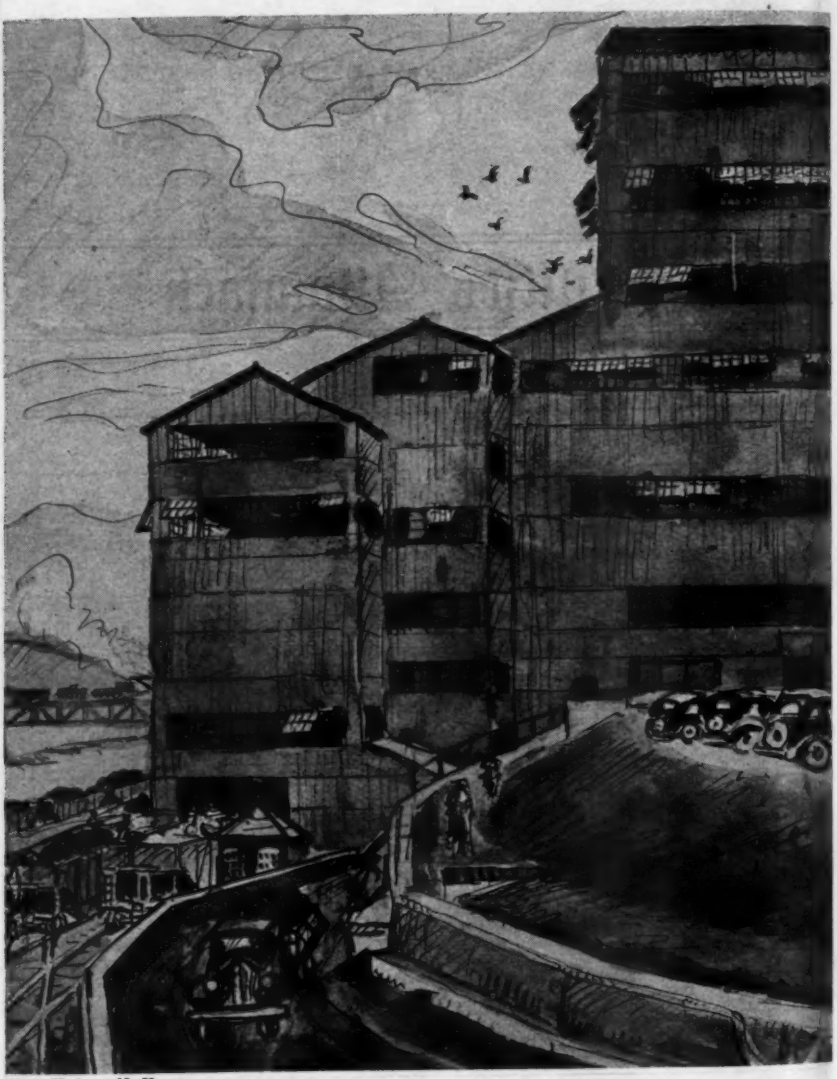
H-893B

ELLIOTT COMPANY
JEANNETTE, PA., RIDGWAY, PA.
STEAM TURBINES · MOTORS · CONDENSERS · HEATERS AND GENERATORS · EJECTORS · CONDENSING

Utilities Almanack

DECEMBER

6	Th	¶ *American Institute of Electrical Engineers will hold meeting, New York, N. Y., Jan. 21–25, 1946.*
7	F	¶ *Pacific Coast Electrical Association opens meeting, Fresno, Cal., 1945.* ¶ *National Manufacturers Association concludes meeting, New York, N. Y., 1945.*
8	Sa	¶ *Institute of Radio Engineers will hold technical meeting, New York, N. Y., Jan. 23–26, 1946.*
9	S	¶ *Independent Natural Gas Association of America will hold membership meeting, Houston, Tex., Jan. 28, 1946.*
10	M	¶ *Federal Power Commission will resume natural gas investigation hearings, Houston, Tex., Jan. 28, 1946.*
11	Tu	¶ *National Metal Exposition will be held; Cleveland, Ohio, Feb. 4–8, 1946.*
12	W	¶ *Kentucky Independent Telephone Association will hold meeting, Apr. 4, 5, 1946.*
13	Th	¶ *American Water Works Asso., Four States Sec., convenes, Baltimore, Md., 1945.* ¶ *Interstate Oil Compact Commission opens meeting, Wichita, Kan., 1945.*
14	F	¶ *Nebraska Telephone Association will hold meeting, Apr. 9, 10, 1946.*
15	Sa	¶ *Iowa Independent Telephone Association will convene, Des Moines, Iowa, Apr. 11, 12, 1946.*
16	S	¶ *United States Independent Telephone Association will convene, Chicago, Ill., Apr. 16, 17, 1946.*
17	M	¶ *American Bar Association starts meeting, Cincinnati, Ohio, 1945.*
18	Tu	¶ *Ohio Independent Telephone Association will convene, Columbus, Ohio, Apr. 23, 24, 1946.*
19	W	¶ *National Association of Corrosion Engineers will hold meeting, Kansas City, Mo., May 7–9, 1946.*



Elsie Hafner, N. Y.

Anthracite Colliery

By Frederick K. Detwiller

Public Utilities

FORTNIGHTLY

VOL. XXXVI; NO. 12 DECEMBER 6, 1945

Keeping REA on the Track

The author, a strong advocate of rural electrification, declares that the present problem in connection with the service is how to protect the farmers from being loaded with unnecessary debt through reckless REA loans for unwise construction and acquisition of properties.

BY LYLE H. BOREN
U. S. REPRESENTATIVE FROM OKLAHOMA

As a strong advocate of rural electrification, I have followed with close interest the progress of the Poage Bill (HR 1742). With reference to this bill, and the activities and policies of the Rural Electrification Administration, I present four specific recommendations:

FIRST: I want any appropriations or authorizations made by Congress to be on the basis of wise investments properly protected from waste and careless spending.

SECOND: I want every dollar that Congress appropriates for the farmer to go to the farmer and not be diverted to other unauthorized purposes.

THIRD: I want the farmer protected against a policy which chains and enslaves him to a load of unreasonable debt.

FOURTH: I want the REA to obey the law.

I raise the question, why vote a special authorization as this bill proposes as it neither adds to nor detracts from the amounts already available to the Rural Electrification Administration, subject to annual congressional approval?

Section 3(a) of the Organic Act as amended already has authorized the expenditure of funds "in such amounts . . . as Congress may from time to time

deem necessary." If Congress should desire to appropriate $10,000,000,000 for this purpose over the next three years, it already has the authorization in the existing law.

However, under the law as now written, REA must present to the Secretary of Agriculture a specific program of projects and detailed analysis of how it expects to use the money. Then the Secretary must present these figures to the Bureau of the Budget and justify them to that agency. The third gantlet to be run is the Appropriations committees of House and Senate, plus congressional approval. It is apparent that if Congress previously had passed a measure setting a half-billion-dollar figure as a 3-year goal for REA, its way would be smoother in hurdling these three obstacles.

But this bill proposes to by-pass the Budget Bureau and congressional appropriations committees for annual scrutiny. For the next three years REA can write its own sight drafts on RFC up to and including more than half a billion dollars. How or where it will be spent Congress may or may not find out later—but in any event after the fact. And Congress will have virtually waived its existing powers.

THIS idea of blank-check authorization is not new to the Congress. We have seen it in so many of the war appropriations and we have seen it in the WPA and such appropriations. We know it to be born of the ambition of bureaucracy to be free of congressional restraint and we know from experience that abuse of the blank-check authorization has been general, in fact almost universal. We have had this fight over and over again ever since the days when Congress felt the necessity to earmark appropriations for specific uses.

In effect if not in fact this authorization is in the pattern of the lump-sum appropriation plan long urged by the advocates of the so-called "administrative democracy," Alva Hanson's name for the sort of misbegotten communism which preoccupies the attention of some of our more left-wing do-gooders and economic soothsayers. It certainly has a tendency toward surrender of the independence of Congress to the discretion of obscure and irresponsible administrative functionaries.

Nor is the provision for a special $5,000,000 annual appropriation for so-called planning more necessary to REA than the half-billion-dollar spending authorization. Ample provision is already in the law. Section 6, which reads as follows, amply covers authorization of appropriations for this purpose:

> Section 6. For the purpose of administering this act and for the purpose of making the studies, investigations, publications, and reports herein provided for, there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as shall be necessary. (May 20, 1936, Chap 432, § 6, 49 Stat 1365.)

Under the above authorization the Congress has appropriated funds to the REA for planning as well as other administrative expense. The language of the pending bill would imply that no planning funds have been available during the years that REA has spent nearly half a billion dollars of the farmers' money.

AT this point I should like to take note of some of the special characteristics of the REA that distinguish it from any other agency.

Although it is in law and in fact a

lending agency it is also a spending agency. But it does not spend its own money. On the theory that farmers are inexperienced with the highly developed art of electrical distribution, REA has always maintained a construction and engineering department which draws specifications and designs systems and supervises contracts. Money is loaned to co-ops only if they accept these plans and contracts. *The farmers themselves are given assurance that they will be able to pay for these lines out of earnings by a written finding and certification by the REA Administrator that in his judgment the loans will be repaid within the time agreed upon.* (Section 4.) Put in as a safeguard for the farmer, this provision has been used to induce him into uneconomic borrowing instead of protecting him from it.

No other Federal lending agency to my knowledge has similar functions and duties. The chairman of RFC is not required to certify to the businessman who borrows from that institution that his loan is safe and bankable. Nor does the RFC design and supervise the operations of the businessman either before or after the loan, except that it keeps a wary banker's eye on the deal.

MOREOVER, the REA extends a large degree of control over its co-ops so long as they remain in debt to the Federal government. In certain ways it assumes many of the relationships, good and bad, between a public utility holding company and its subsidiary companies. That control will be relinquished only when the co-op has paid back its last farthing of debt to REA.

So here we have an inherent conflict of interests between the banker bureaucracy on the one hand and the farmer on the other. The day the last farmer co-op has repaid the last REA loan will be the day that this institution ceases to exist.

It is natural to suspect that these bureaucrats are viewing with dismay the inevitable future when they must look forward to a dwindling bureau with diminishing payrolls as, year by year, the farmers bail themselves out of debt. It follows that their bright enthusiasm in advancing loans sometimes may not always have taken into sufficient consideration the farmers' best interests: so to arrange loans that the co-op can get out of debt as quickly as possible.

Moreover, the record of REA in recent years does nothing to allay this suspicion.

On October 16th, Lee M. Nelson, manager of municipal utilities, Rochester, Minnesota, testified before the Federal power subcommittee of the House Interstate and Foreign Com-

¶ *"... the REA extends a large degree of control over its co-ops so long as they remain in debt to the Federal government. In certain ways it assumes many of the relationships, good and bad, between a public utility holding company and its subsidiary companies. That control will be relinquished only when the co-op has paid back its last farthing of debt to REA."*

merce Committee at its hearing on the Poage Bill. Mr. Nelson stated that, regardless of higher costs, the REA induced local coöperatives to form a sort of holding company co-op for the purpose of building generating plants and transmission lines. Mr. Nelson's well-documented case leaves only one conclusion: that REA deliberately loaded down these farmers with a high-cost debt that will inevitably prove more difficult to pay out than a loan based on a cheaper power supply, even if purchased from municipalities and private companies. And it follows that the more difficulty the farmers get into in bailing themselves out the more jobs there will be for the eager beavers of bureaucracy in St. Louis.

PARAPHRASING the ancient "Beware of Greeks" adage, a farmer friend of mine who is a member of an REA co-op recently wisecracked in a letter to me: "Beware of REA boys bearing loans."

The REA is faced with the awful fact that within a very few years it will have done the first half of its job, which is to extend electricity to all of the available farms in the United States.

When it enters into the second phase of its job, which is the collection of the funds advanced by the United States government to farmer coöperatives for rural electrification, REA's functions, its influence, and, most important, the size of its payroll will rapidly diminish. Within thirty-five years or shortly thereafter it should have dwindled out of existence. But long before that the REA will have become a small and unimportant sinecure for a few aging and deserving civil servants.

Throughout history bureaucrats and bureaucracies have retained certain similarities regardless of form of government—monarchical, republican, or socialist. The most common characteristic of all bureaus and bureaucrats is the tendency toward expansion and self-aggrandizement, never voluntarily relinquishing a power and never voluntarily curtailing its expenditures. This was as true in ancient Egypt and in the vast machinery of the Roman Empire as it is today in the Federal government of the United States.

I raise this point here to suggest that the ardent testimony in favor of this huge grant of money on the part of interested REA officials might possibly be in truth self-serving statements intended to further legislation that would perpetuate and expand their own activities and jobs.

I SUGGEST that we find out how many vacant farms, how many unoccupied rural residences, how many summer resort cottages they have included in their aggregate of yet-to-be-electrified farm homes. It would be interesting and pertinent to go outside of REA sources to ascertain how many of these farms to be electrified have income sufficient to support an electric light bill; how many of them are located too far from lines to be accessible; and how many of them are so situated as to be served economically and practically only by private companies.

If the truth were known I have a reasonable belief that the remaining job of bringing electricity to American farm homes could be accomplished in a very few years, three or four if vigorously pursued. And I further believe that the job can be done with the

Congress Generous to REA

"REA has always had on hand more money than it could feasibly use. Seldom has Congress reduced its loan authorization and that was during the war when the scarcity of copper seriously limited line construction. More than once Congress has given to REA more than it asked for and more than the Bureau of the Budget approved. When, as, and if needed, Congress on its record will always be as generous in the future as in the past."

$300,000,000 plus already available to the REA when added to the promised expenditure of a like amount by the private industry.

However, if there be any doubt as to the sufficiency of the money available, there is no necessity for special legislation to that end.

REA has always had on hand more money than it could feasibly use. Seldom has Congress reduced its loan authorization and that was during the war when the scarcity of copper seriously limited line construction. More than once Congress has given to REA more than it asked for and more than the Bureau of the Budget approved. When, as, and if needed, Congress on its record will always be as generous in the future as in the past.

We have heard something of the sour REA loans in the Southwest. These are not isolated examples.

Let us consider briefly the Alabama Water Company acquisition. For documentation one may read of this matter in great detail with a rich supporting background of sworn evidence and official documents in Parts 2, 3, and 4 of the hearings in 1944 investigating the administration of the REA by a subcommittee of the Senate Committee on Agriculture and Forestry.

This is a small utility company operating in nine counties of central Alabama. As one of the subsidiaries of a holding company it was up for sale in 1943 under an SEC order in compliance with the utility holding company "death sentence."

REA sent three engineers down there to look over the properties and reported (see page 1273, Part 4) against the purchase at the then asking price of $2,500,000. They reported (1) that the property was dilapidated

and would require great expenditures to put it in satisfactory condition; (2) that three of its power dams had been washed out before and were subject to future washouts; and (3) that (and I quote) "the $2,500,000 was a ridiculous price, and the true value was somewhere between $1,500,000 and $1,800,000." Elsewhere they reported that the company's Diesel engines were from seventeen to twenty-five years old and that the dams were from thirty-five to thirty-eight years old.

On the basis of this report and other information, Harry Slattery, the then administrator, repeatedly refused to authorize this acquisition. His refusal was in the face of heavy political pressure as well as from certain elements within the REA.

On April 29, 1944, however, Mr. Slattery reversed himself, after receiving a long letter from the then Secretary of Agriculture, and present administrator of REA, Claude Wickard, in which the latter left him virtually without discretion. With the allotment of two and a half million went a second allotment of the same amount for rehabilitation of the system—a total of $5,000,000.

In the fall of 1943 and spring of 1944 I made an extensive analysis of this whole question of REA acquisitions both from the standpoint of public policy and of its legality. This lengthy documented analysis appears in the appendix of the *Congressional Record* of March 2, 1944. To those who wish to examine into this matter I recommend it as a source of much information which the REA has not challenged nor disputed.

This study was prompted by a wholly illegal acquisition of a small electric property by REA lying partly within my district. From then on the more I studied the REA acquisition program, the more amazing I found it.

My findings of a year ago are even more emphatically self-evident today.

The root cause of this policy of buying up the cats and dogs of the utility industry has often been described as the socialistic objective of promoting nationalization of the electric industry. That may be true to a degree, but it seems to me that one need look no further than the very nature of bureaucracy itself to find the cause. The most impelling continuous force in most bureaucracies is to continue to live and to expand even it the expense of public interest.

Back in the late thirties it became apparent to the REA planners that the day was rapidly approaching when they would have worked themselves out of a job, that the farm homes of America would all have been electrified. This horrible prospect probably prompted a change of policy. To postpone that evil day money voted by Congress for honest-to-goodness farm lines was diverted into other channels having the color of assisting in farm electrification, thus neglecting farm electrification and adding to farmer cooperative debt to REA.

Super co-ops were formed in many states. Local co-ops became members of super co-ops which in some instances stood in the position of intermediary holding companies between the local groups and the Federal agency.

These super co-ops, some statewide and several interstate in character, re-

ceived millions of dollars in funds from REA for three purposes: (1) construction of electric generating stations; (2) construction of costly high-tension transmission lines to connect with the low-tension distribution lines of local co-ops; (3) the purchase of all or segments of existing private utility systems.

Before the war the emphasis was on the construction of transmission lines and generating stations. The justification for this activity was the provision in the law permitting such activities when, in the opinion of the Administrator, the co-ops are unable to purchase wholesale power at what he considers a reasonable rate. That was, of course, a wide-open door..

THE variations which REA from time to time has considered reasonable wholesale rates have been a constant source of wonderment to me. In my own state transmission lines and generating stations were attempted in the face of rates that were obviously reduced below cost by the private companies. Right now the Oklahoma Gas & Electric Company has a 6-mill wholesale rate in effect to co-ops which it had to get approved by the state utilities commission because of the admitted subsidy therein and its apparent discrimination against the urban customer. REA appeared before the commission—believe this or not—to oppose this rate! The company offered this rate for all rural customers of co-ops but naturally excluded it from industrial and commercial co-op customers. So, on this thin excuse, of exclusion of industrial load from the farm electric rate, REA fought this cheap rate to farmers.

When the war came this program of constructing generating stations and transmission lines was brought almost to a standstill. It continued only where the color of necessity for the war effort could be used as in the case of the now white elephant Ark-La line and the reckless expenditures for a line to the Arkansas cinnebar mines. The farmers of those co-ops are now holding the bag. But the REA was thus able to keep up a show of activity during the dull days of the war when its very existence was threatened as an unnecessary agency in wartime.

Replacing the construction program in the summer of 1942, the REA turned its attention to the acquisition program. With the happy coöperation of utility holding companies who were under compulsion to sell anyway, the REA bureaucrats garnered under their control one of the finest assortments of down-at-heel, dilapidated, worn-out old electric operating systems to be found anywhere in the country.

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¶ "WHEN *the farm electric coöperative moves to town, starts running the local light plants and light service in urban areas, then it ceases to be a farm electric coöperative. It is just an electric coöperative, doing business like any private electric utility except that it is exempt from Federal taxation. It is exempt from Federal income taxes . . . only if 85 per cent of its gross revenue derives from its own membership.*"

THE reckless abandon with which these bureaucrats spent the farmers' money and loaded them with unnecessary debts, all in the blessed name of farm electrification, is one of the scandals of the past few years. When it all comes to light, as it should by a special investigation by Congress, we are going to find that thousands of farmers, trusting the good faith and the good judgment of the REA, have been saddled with debts that will take generations to clear—and then only by paying a high rate for their power.

Farmers are running railroads, city water systems, city ice companies, and other miscellaneous business activities, all bought with funds approved by Congress for bona fide farm electrification.

The program makes sense only if it is studied from the standpoint of the bureaucrat and his job. Given the vast millions contemplated in this bill, our REA friends can look forward to a long career of trouble-shooting among financially ailing farm coöperatives. The basic objectives of the farm electric program will have been lost. But these boys will be safe in their jobs for years to come.

When the farm electric coöperative moves to town, starts running the local light plants and light service in urban areas, then it ceases to be a farm electric coöperative. It is just an electric coöperative, doing business like any private electric utility except that it is exempt from Federal taxation.

It is exempt from Federal income taxes, however, only if 85 per cent of its gross revenue derives from its own membership. That is the Federal law and Treasury regulation applying to farm electric co-ops. It is a mystery to me as to how some of these co-ops avoid paying Federal income taxes since in many instances it would seem apparent that they have not signed up as much as 85 per cent of their gross revenues as members. For example, when the Missouri Electric Company was purchased a couple of years ago by the Sho-Me Co-op, it was discovered that no municipality or other public corporation could constitutionally join a coöperative. That throws all of the street-lighting and other municipal electric business out of their gross for tax purposes.

CONGRESS took cognizance of possible widespread tax avoidance by institutions and groups using the color of nonprofit activities as a means of obtaining tax exemption and authorized a national study by the Treasury of this subject. All REA coöperatives are now under this scrutiny.

Now I don't believe one disinterested lawyer in ten will assert that the REA acquisition program has a legal leg to stand on. When the law was first under discussion in 1936 Congress voted down a specific amendment to permit acquisition. The legality of the whole program stood on the frail peg of self-serving legal opinion by the late Mr. Nicholson, REA deputy administrator, who undertook to contend that when Congress authorized the REA to construct rural lines it really meant the word "construct" to include "to acquire." Besides, added Mr. Nicholson, even if Congress didn't mean it that way, we've been doing it so long that by very practice the policy has become legal. By the same theory habitual criminals, if uncaught long enough, should be acquitted.

But, as a practical matter, I think ex-

perience will show that there may be times when minor acquisitions have been useful and necessary. Fragments of private properties tied in with a coöperative system might result in better service for all concerned.

The trouble lies in the fact that there simply are no rules applying to acquisitions. REA has bought properties serving scores of incorporated towns. Some farm electric co-ops have more nonrural members than farm members. Under the present setup there would be no barrier for the REA to advance funds to a small coöperative to buy the common stock of the Oklahoma Gas & Electric Company and the Public Service Company of Oklahoma, and operate in the whole state of Oklahoma as an electric coöperative. I don't contend that they would do it but I assert that they could.

I THINK our problem is not so much the authorization of more money for REA but to protect the farmer from being loaded down with unnecessary debt. I hope that we will find safeguards against reckless advance of loans to farmers who after all must presume that the banker, if he is acting in good faith, would not lend money unless he thought it could be paid back on time.

One suggestion has come to me as a solution to the acquisition problem that I think merits consideration. While recognizing that acquisitions have been illegal in the past and that many of them have been unwise, let us face the fact that there may be times when acquisition of segments of other electric properties is a sound procedure.

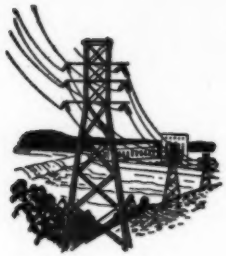
Why not accept as a yardstick the Federal Treasury's tax rule as to bona fide coöperatives: 85 per cent of gross revenue?

Let acquisitions be permitted only after the prospective coöperative purchaser has obtained firm applications for membership in its coöperative from 85 per cent of the gross business of the property to be acquired. If the proposition is a sound one for the coöperative and for the people to be served, this limitation will present no difficulties whatever.

That is only one suggestion. Perhaps as we explore the problem, we will find better and different ones.

"THE *oldest of the misleading statements we* [*Federal Power Commission*] *have had to meet is the charge that the commission has sought to extend its licensing authority to every creek and rivulet in the United States, or, as one distinguished attorney emotionally declared, 'to every drop of water that falls upon the mountainside.' The absurdity of this charge is best demonstrated by citing the fact that the commission has refused to take jurisdiction in more than half the cases in which 'declarations of intention' have been filed for the construction of hydro projects on streams about which the applicant had some question.*"

—BASIL MANLY,
Chairman, Federal Power Commission.



The Mighty Missouri

The projected development of the Spinal river system of the great inland empire—controversy over the Pick-Sloan and MVA plans.

By M. Q. SHARPE
GOVERNOR OF SOUTH DAKOTA, CHAIRMAN
OF MISSOURI RIVER STATES COMMITTEE

THE Missouri river system is mighty in size. Few people have any conception of its vast dimensions. If the system from Three Forks, Montana, to the Gulf of Mexico is considered, it is the greatest in the world. This is really the Missouri river system. The Missouri yields to the Mississippi at St. Louis, and, thereafter to the Gulf; the character of the stream more nearly resembles the Missouri than it does the Mississippi above St. Louis. This article, however, will describe the Mighty Missouri as ending at St. Louis. So limited, it is still the largest river system in the North American continent; larger even than the Mississippi from its source to its mouth. From Three Forks, Montana, where the Missouri is formed by the junction of the Jefferson, Madison, and Gallatin rivers, whence comes the name Three Forks, to the junction with the Mississippi at St. Louis it is 2,470 miles in length. Its basin covers a total of 530,000 square miles—one-sixth of continental United States. More than 9,000 square miles of its basin are in Canada. Its basin embraces parts of ten states: Colorado, Wyoming, Montana, North Dakota, South Dakota, Minnesota, Nebraska, Kansas, Missouri, and Iowa. The governors of these states back in 1941 formed a semiofficial committee known as the Missouri River States Committee. Since that time much has happened toward the actual control and development of this mighty stream.

It is mighty in its variety and abundance of resources. As it proceeds from its snow-capped mountain and glacier country in Canada, Colorado, Wyoming, and Montana, it flows through an ever-changing variety of climate and soils from the semifrigid North to the semitropical South; from the light shales and heavy gumbo of its upper reaches to lands where the richest black loam in the world is anywhere

from 3 to 70 feet deep. From these soils come the greatest production of corn, wheat, barley, rye, oats, sorghums, hay, livestock, wool, sugar, dairy products, and some other agricultural products and by-products of any single river system in the world. Within the states of its basin are found vast deposits of iron ore, manganese, copper, zinc, lead, coal, oil, gas, gold, silver, mica, bentonite, feldspar; and, in fact, practically all the useful and precious metals. Great forests occur in various parts of the basin. Much of the nation's lumber comes from them; much of its cement, brick, tile, and building stone comes from it. It has all the essentials of a self-contained economy. Throughout the basin are some of the nation's greatest cities and many smaller cities and towns, and some ten million progressive, industrious, educated people, enjoying in their homes and throughout their communities all the modern conveniences of travel, communication, mechanical and scientific equipment, and a standard of living comparing with that found anywhere on earth. It is really a great inland empire in the approximate center of the United States of America. It could easily support twice the population it now has and there would be the richest kind of opportunity, even then, for all.

THE Missouri is mighty in its tremendous power and energy both for bad and for good. Annually its tearing floods produce a damage to tangible property of about $20,000,000. In some years, like 1943, flood damage to tangible property such as bridges, buildings, livestock, crops, cities, and towns amounts to $40,000,000 or $50,000,000. With all this it is also ever eating away and carrying to the sea by erosion of plains and banks the rich top soil of the Missouri basin to such an extent that the river has been nicknamed "The Big Muddy."

With these floods taken under control the river would still be mighty, with an enormous quantity of electric energy. The calculated energy resulting from the flood-control dams now authorized is more than five and one-half billion kilowatt hours annually. This means almost seven billion horsepower annually added to the resources of this valley. This is only a fraction of its total electric energy because its dams are designed primarily for flood control and a safety zone ample for this and some margin in addition is first provided.

A mighty development of the Mighty Missouri is about to take place. The recent Flood Control Bill enacted by the last Congress (HR 4485) and signed by President Roosevelt December 22, 1944, is now law. It provides for a complete flood-control and development plan of the entire river system, costing approximately $1,500,000,000.

LET no taxpayer now or in the future shudder at this expenditure of another billion or two. It is a self-liquidating, internal improvement for which only the temporary advance of funds is required. When the system is completed it will pay its costs and thereafter pay dividends, from its direct cash revenues and benefits. This is now plainly established by government experience in developing other rivers. In addition to this will be the indirect benefits to the Treasury through increased production and population resulting in in-

Missouri River Development

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creased quantities of tax payments of all kinds from income, sales, internal revenue, excise, and others. This does not mean higher *rates* to the taxpayers; it means only greater quantities at the old or lessened rates, because there is more business and more people paying them. The installation of hydroelectric units totaling one and one-half million kilowatts, producing about five and one-half billion kilowatt hours annually, or seven billion horsepower of new energy annually when geared into the vast deposits of various kinds of natural resources existing throughout the valley, in itself spells financial balance for the project. Coupled with this, however, is the fact that nearly five million acres of new productive land will be added to the nation's resources by the dams, large and small, throughout the basin. Along with this also will be a saving of the flood and erosion damage in excess of $20,000,000 per year average. Conservatively calculated, the benefits will exceed the costs on the proportion of about two and one-half to one.

NOT the least of the majestic benefits of this project is the fact that it will connect the upper reaches of the river by practical navigation facilities with the great internal waterway system of the United States and with the world at large through the Gulf of Mexico. Barges may go from Montana to New Orleans, laden with wool, grains, hay, minerals, and may bring back many products of the southland and tropical countries. Flours, grains, wool, hides, and minerals will go, all water-borne, from the Dakotas, Nebraska, Kansas, Iowa, and Missouri to St. Louis, Memphis, Pittsburgh, Chicago, New Orleans, and the world at large and bring back all manner of raw materials, fabricated materials, and

products of all kinds adaptable to water transportation. The Mighty Missouri inland empire will have added to it a complete new transportation system, connecting it with all the major producing and industrial centers of the nation as well as the world at large by a practicable all-water route. Once again the Missouri will furnish the transportation benefits that it did in the early days of development of the Northwest, but on a greatly improved and extended scale. Navigation of the Missouri will add vastly to the wealth and prosperity of the basin states.

It requires no loose financial calculation to arrive at the conclusion that present and future taxpayers will benefit from the internal improvement instead of paying for it.

MIGHTY plans and struggles are a natural accompaniment to the mighty development of a mighty river. The plan recently adopted by Congress is sometimes called the Pick-Sloan plan for Major General Lewis A. Pick, Army Engineer, and Reclamation Engineer W. G. Sloan, from whose ideas it was evolved. Sometimes it is called the Army Engineer-Bureau of Reclamation plan as those are the two agencies whose united efforts evolved it and who are entrusted with its construction and administration by law. In broad outlines the plan is as follows: Small but sufficient dams on the numerous tributaries, which dams will serve the various purposes of flood control, irrigation, desiltation, and erosion control; five large main stream dams below the present one at Fort Peck (they will be the key structures in producing the multiple benefits of flood control, irrigation, power development, navigation, recreation, and others); a continuous line of levees on both sides of the river from Sioux City, Iowa, to St. Louis, Missouri, which will protect the bottom lands of Iowa, Nebraska, Missouri, and Kansas, and also the many large cities and towns along the river banks.

The plan is the result of about one hundred years of exploring, experience, and record keeping along the Missouri. It provides for the heaviest conceivable run-off from the entire 530,000 square miles, even with a 4-foot blanket of snow on the upper prairies; all the storage reservoirs are so placed and designed that they can catch and hold it and allow the water to run off gradually and harmlessly in times of flood, and can hold about 70,000,000 acre-feet in storage for times of drought and for use in irrigation, navigation, and power development.

THE plan has passed the searching review of many critical boards, both technical and lay, including, among others, the National Rivers and Harbors Board, committees of both the Senate and House, and finally, both bodies of the United States Congress. The plan is generally conceded to be feasible, sound, practicable, and as nearly perfect as modern engineering and science can make it.

So alluring are the benefits of the plan and the great public service opportunities resulting that various organizations struggle for its control. Now there is raging a controversy which the public generally does not understand. It is the contest on whether or not the Missouri river system shall be developed under the Pick-Sloan plan already enacted into law, or whether or

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not a plan known as the Missouri Valley Authority, or the MVA, similar to the Tennessee Valley Authority, shall be adopted.

Supporters of the MVA idea, and they include, among others, the President of the United States, point to the operations of the Tennessee Valley Authority as support for the MVA; opponents point to the difference in size, resources, and conditions generally between the Tennessee and the Missouri and argue that the practicability of the one does not insure success for the other. The opponents of MVA argue that the variety of their climates, soils, natural resources, occupations, and local conditions requires a control of the system in which the states themselves shall have much to say. They claim a proprietary interest in and ownership of the water for irrigation, power development, and other local uses, subject only to the paramount regulatory control and possession of the Federal government for flood-control and commerce regulation under the Constitution. They claim the United States Supreme Court has already decided it that way. They dislike the idea of such a large system and area controlled with so much authority by a 3-man board appointed only by Federal authority and responsible only to Federal authority.

THE real controversy between the MVA idea and the Pick-Sloan plan is based more on getting control of the construction and operation of the system than on the physical features of the plan itself. Supporters of the MVA idea testified in substance to the effect, in a hearing before the U. S. Senate Committee, that the Missouri Valley Authority would probably use the general physical features of the Pick-Sloan plan so far as actual construction was involved. This fact was commented upon by that particular committee which made an adverse report against the MVA idea, the comment being to the effect that if the MVA was to use the Pick-Sloan plan anyway, the government agencies (Army-Reclamation) which evolved the plan might as well construct and administer it.

This article does not purport to discuss the merits and demerits of either plan. All that is done here is to point out the fact that the real controversy

between the plans is as to who will construct and administer the giant development of the system. The main argument for the MVA is that they would have more independence and control and could extend their operations more broadly and could make decisions more promptly. The Pick-Sloan advocates say that the MVA would have too much independence and control and would make decisions too promptly for the entire basin to have any chance to participate. They say that the states of the basin should have more control. That is really the crux of the whole controversy—total unrestricted Federal control or joint Federal and state control.

REGARDLESS of the controversy, it is reasonable to expect the actual development work to commence on the Garrison, North Dakota, reservoir early in 1946. Plans for the construction of a town site there are now being made and the site will be prepared for next year's work. The garrison dam impounds about 19,000,000 acre-feet of water and is comparable in size to Fort Peck which has proved the success of such main stream dams on the Missouri. Commencement of the development now will aid greatly postwar reëmployment and readjustment programs. Settlement of the controversy as to whether it shall be an MVA or the Pick-Sloan plan is not essential to commencement of the work. If the Pick-Sloan plan does not operate satisfactorily, it can always be shifted into an MVA. The important thing is to get the work started soon. It is certain to be done. Development of the Mighty Missouri is here.

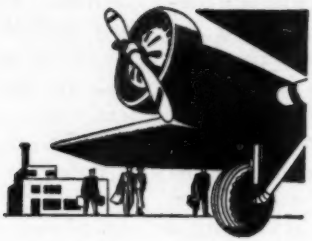
PG&E Dividends Help to Pay Universities' Costs

"PROMINENT among the American educational institutions that are partner-owners of the Pacific Gas and Electric Company is the University of Pennsylvania at Philadelphia, which was founded in 1740 by Benjamin Franklin and has a distinguished record of achievement in many fields.

"In an unsolicited letter, John B. Thayer, financial vice president of the University of Pennsylvania, writes that of the $27,000,000 endowment funds of the institution held by the trustees on March 31st of this year '36 per cent was invested in the common stock and 19 per cent in the preferred stock of a number of substantial and well-managed United States corporations.'

"To this he added: 'May I extend the best wishes of the trustees of the University of Pennsylvania to the management of your company in appreciation of their splendid achievements in the war effort and their contribution to the prosperity of the nation as a whole? Institutions such as ours, also contributing extensively to the war effort through education and research, are heavily dependent upon the prosperity of American industry.'"

—EDITORIAL STATEMENT,
P. G. and E. Progress.



Should Air-line Securities Be Regulated?

Present efforts of the Civil Aeronautics Board to obtain control over new security issues by air lines pose, in the opinion of the author, a threat to the growth of this new industry, and a similar problem, he says, may eventually confront the natural gas lines.

By W. D. GAY

As indicated in the 1944 Annual Report of the Civil Aeronautics Board, the board is actively endeavoring to obtain control of security issues of the air lines through new legislation:

"Among the detailed legislative recommendations made by the board in its annual report for 1942," the report states, "there is one which has become particularly timely in view of the imminent expansion of air transportation and the broad financing plans which this expansion involves. This is the recommendation, renewed in the board's annual report for 1943, that the board be given the power to approve the issuance of securities or assumptions of obligations or liabilities by air carriers.

"There is now no control of security issues or capitalization of air carriers. The Securities Act of 1933 does not provide the type of control needed. It is a 'blue-sky' law designed to make certain that investors are fully informed as to the facts behind proposed issues. If such facts are properly set forth, the Securities and Exchange Commission cannot prevent the proposed financing even though it may be highly undesirable from the standpoint of the economic soundness of the organization proposing the financing.

"It is necessary, in order to prevent the development of economically unsound capital structures, for the board to have the power to approve the issuance of securities. The Interstate Commerce Commission and the Federal Power Commission already have a similar power with respect to companies subject to its jurisdiction under the Public Utility Act of 1935. Regulation of security issues, to be effective, must precede the growth of unsound

capital structures and uneconomic financing practices. The air carriers will find it necessary to undertake the financing of large postwar financial requirements, and it is essential that the authority sought be granted promptly."

A BASIC principle behind the regulation of security issues of public utility companies is to make certain that the *lowest-cost money* is obtained, thereby permitting the lowest possible rates to the public. A sizable part of the total costs of the electric, gas, water, and telephone industries represents investment costs — *i.e.*, bond interest, sinking fund, and dividend payments. This situation reflects tremendous investments in fixed assets of the public utilities; in the electric industry, for example, it is necessary to invest over $4 in property to produce $1 of revenue.

If a public utility company is given a certificate of convenience and necessity (or a franchise), it is immune from competition from any similar public utility company in its service area. In other words, public utilities are necessarily monopolies, and as such must be regulated in the public interest. The rates charged must be regulated, as well as their operating expenses and security issues, in order to make certain that the public does not suffer from the lack of competition.

The situation is entirely different in the case of the air lines, as they are not monopolies and therefore cannot be considered in the same light as the above public utilities. Air transportation has always been characterized by *competition* between individual air lines, which competition has been fostered by the Federal government as the best means of developing the industry "to the extent and of the character required for the commerce of the United States, the Postal Service, and the national defense."[1]

THERE currently are four air lines competing actively for transcontinental business. There are several routes, such as from New York to Chicago, on which a passenger can use any one of five air lines. In reflection of this active competition there have been two general and voluntary passenger fare cuts in the past two years, and several special fare cuts have been made by individual air lines.

In order to meet the competitive tariffs of other air lines, a company in this industry must obtain every economy possible, including economy of financing. In short, it is a *must* in the air transport business that new capital be obtained at the lowest possible cost.

Another "must" is for air-line managements to engage in financing which will improve the investment status of their companies. Until recent years, this young industry was considered as highly speculative, as witness the statement of Senator McCarran, co-author of the Civil Aeronautics Act, relative to the latter:

> This legislation was conceived for progress and development. It was nurtured in the spirit of equity and fair play so as to lend encouragement to fearless, venturesome men who might be interested in investing in an industry that was and is as to its vicissitudes and changes unknown and unmeasured.[2]

IN order to obtain the lowest-cost capital, air-line managements have been forced to avoid any type of

[1] Section 406(b) of the Civil Aeronautics Act.

[2] "Civil Aeronautics Act Annotated," C. S. Rhyne.

Delays in Financing Programs

"REGULATION of new security issues by Federal agencies has often in the past resulted in delays in financing. There have been cases where more than one year has elapsed before the Securities and Exchange Commission has given an opinion on a financing application by a subsidiary of a utility holding company. The Interstate Commerce Commission generally requires much less time in passing on new security issues by railroads, but its hearings have sometimes resulted in delays in financing programs."

financing which might add to the speculative regard for their business. Under the circumstances, there has been no need for any regulatory agency to prevent "unsound capital structures and uneconomic financing practices" in the industry.

It might possibly be argued that the railroad industry also is characterized by competition between individual companies, and yet its new security issues are regulated by the Interstate Commerce Commission. However, the railroad business is an old, established industry and is not undergoing rapid secular expansion as in the case of the air lines—*i.e.*, there is not the competition for new routes, for new equipment, and for new capital that exists in the air transport business. Hence, the mere fact that control of new security issues has not been unusually burdensome to the railroads by no means supports the contention that air-line security issues should likewise be so regulated.

THE air transport business differs entirely from the public utility industries from the standpoint of its *fundamental economics.* Most important is the fact that relatively little capital investment is required to provide air transportation service. In 1944 the air transport business needed only $1.08 investment in *total assets* to produce $1 of gross revenue, and an investment of only 15 cents in net operating property to provide the latter. While capital investment is relatively small, however, the ratio of operating expenses to gross revenue is quite high in the air-line business.

Obviously, because of the comparatively low capital investment, the cost of money is much less important to the

air lines than to the public utilities. It is this fundamental difference, incidentally, which has made impracticable the use of the rate base-rate of return formula in regulating rates of the air lines.

REGULATION of new security issues by Federal agencies has often in the past resulted in delays in financing. There have been cases where more than one year has elapsed before the Securities and Exchange Commission has given an opinion on a financing application by a subsidiary of a utility holding company. The Interstate Commerce Commission generally requires much less time in passing on new security issues by railroads, but its hearings have sometimes resulted in delays in financing programs. Federal Power Commission proceedings on new security issues by interstate electric power companies have often been protracted.

Air transportation companies, however, cannot risk the chance of delays in their financing. Unlike the public utility industries, the investment markets are not always open to the air lines. Thus far, there has been very little financing with senior securities in the air transport industry, expansion of the latter having been financed primarily with *common stock* or from within through use of depreciation accruals and earnings retained.

It goes without saying that common stock can be issued only when stock market conditions are favorable. But such conditions are usually temporary so that an air line may miss the opportunity to sell its stock if protracted hearings are held on its financing plans.

Another consideration is that financing in the air transport industry is generally in connection with equipment purchases which are pretty much on a competitive basis. It may prove very disadvantageous to an air-line company to have to reveal its equipment plans when its financing program is being aired before a regulatory body.

THERE is ample evidence that *Congress did not intend* for air-line security issues to be regulated by the Civil Aeronautics Board.

It is of interest that the 1937 or original version of the McCarran Bill provided for regulation of new security issues by the air lines virtually on the same basis that railroad security issues are regulated by the ICC under the Interstate Commerce Act. When the bill was revised in April, 1938, it placed control of new security issues in the hands of the Civil Aeronautics Authority. Similarly, Representative Lea's bill, initially known as "The Air Carrier Act of 1937," provided for control over new air-line security issues by the ICC. This latter bill was later consolidated with Senator McCarran's bill to become the Civil Aeronautics Act.

A study of the legislative history of the Civil Aeronautics Act reveals that comparatively little discussion was held in the committee hearings over the control of new security issues. But the fact remains that the sections providing first for regulation of security issues by the ICC and then by the CAA were *specifically excluded* when the bill was finally passed.

SIGNIFICANT in this connection was the following statement made at that time by Senator Truman when the bill was before the Senate:

¶ *"If a public utility company is given a certificate of convenience and necessity (or a franchise), it is immune from competition from any similar public utility company in its service area. In other words, public utilities are necessarily monopolies, and as such must be regulated in the public interest. The rates charged must be regulated, as well as their operating expenses and security issues, in order to make certain that the public does not suffer from the lack of competition."*

I will now describe as briefly as possible the principal differences in policy which exist between the bill with the amendments suggested by the Senator from Washington and the substitute which I propose. . . . The bill contains a section requiring all securities issued by air carriers to be approved by the authority. The substitute does not contain such a requirement, but *leaves the securities of air carriers to be regulated by the Securities and Exchange Commission.* (Italics supplied.)

Senator Truman was then chairman of the subcommittee on aviation of the Senate Interstate Commerce Committee and was fully conversant with the purposes of the legislation.

Also describing the bill before the House Interstate and Foreign Commerce Committee, C. M. Hester stated:

H R 7273 requires the issuance of securities by an air carrier to be approved by the Interstate Commerce Commission. The present bill does not contain such a provision, and, consequently, the issuance of such securities will be subject only to registration under the Securities Act of 1933. *It was considered unwise to require the authority to take the responsibility of approving the financial expediency of the issuance of securities.* (Italics supplied.)

The above statement of Mr. Hester to the effect that the Civil Aeronautics Authority should not assume the responsibility of approving new air-line security issues is indeed pertinent, as he at the time was not only general counsel to the Treasury Department, but also was the legislative representative of the Interdepartmental Committee on Aeronautics which represented *all* of the Federal departments and bureaus interested in aviation.

Notwithstanding the rather limited discussion in the committee hearings on the matter of regulation of new security issues, it cannot be said that the exclusion of the section providing for the latter was accidental or unintentional. For the Civil Aeronautics Act was one of the most carefully considered pieces of legislation ever passed by Congress. It was preceded by several bills involving regulation of the air lines in connection with which Congress conducted or had conducted fifteen major and several minor investigations. It was obviously after very careful deliberation that Congress decided that the Securities Act of 1933 gave ample protection to air-line investors.

Quite significant is the fact that Congress made a similar decision in connection with the Natural Gas Act of 1938, which was passed approximately the same time as the Civil Aeronautics Act, and which likewise provided for no control of new security issues by the regulatory body involved, *i.e.*, the Federal Power Commission.

SHOULD AIR-LINE SECURITIES BE REGULATED?

A very large amount of securities has been issued since 1938 by natural gas pipe-line companies that are subject to the Natural Gas Act. A sizable portion of these securities has been issued without any control by regulatory bodies, but there is no evidence that investors in or customers of these companies have suffered from the absence of such control. However, if the CAB should obtain control over new security issues of the air lines, it doubtless would not be long before the FPC requested similar control over natural gas pipeline security issues.

No consideration has been given in the foregoing discussion to the possible conflict of interests when a regulatory board is required to protect both the investor and the customer. Most state commissions, it is true, have these dual powers but have been inclined to leave active control over security issues to the SEC which is considered in a much better position to exercise such powers. But there is manifestly no assurance that the CAB would likewise follow this policy.

Because of the unusual conditions affecting the air-line industry, regulation of their security issues in effect would mean assumption of managerial powers. There is ample evidence to support the conclusion that such regulation might prove a serious obstacle to development of this industry which means so much to public transportation, international relations, and national defense.

Atomic Power to Supplement Rather Than Supplant Other Fuels

"No *metal in the world's history will be so jealously guarded or sought after* [*as uranium*]. *Overnight this substance, which formerly sold for $2 a pound and found few bidders, has become the Cinderella of all the natural elements, more precious than gold or any precious stone, more valuable than platinum or even radium.*

"All this, however, does not mean that atomic energy can be of no benefit to mankind for the present or for the immediate future. This would be a gross misconception, arising from the fact that atomic power has been thought of as a mere substitute for coal or oil. Since our coal supply is large enough to last for about 3,000 years and the supply of oil and hydroelectric power is abundant, it would be folly to waste our precious uranium resources, even if that were not prohibited by vital factors of national security, as substitutes for cheap and abundant fuels.

"Atomic energy can be utilized, and in many respects utilized right now, to supply many vital needs that could not be filled by any other form of power on earth."

—William L. Laurence,
Member of staff, The New York Times.

Air War and the Utilities

Had electric generating plants and substations been made primary targets, declares the author, their destruction would have had serious consequences on Germany's military effort.

By T. N. SANDIFER

How vulnerable are a nation's utilities to modern bombing? An atomic - bomb - conscious public would probably answer, "100 per cent," but the on-the-ground check-up of results now being studied shows some interesting facts so far as the bombing of Germany is a clue.

The fact is now realized that Germany's utility system was very vulnerable and, moreover, the German authorities were terribly concerned for fear the Allied air forces would discover the situation. Not only that, but the German electric power situation was critical from the start of the war, and grew more so as the war progressed.

For the first time it is now known, however, that the German power system, as such, was never a primary target in the war, except in isolated attacks. The German electric industry, its component generating plants, transformer and switching stations, transmission facilities, and distribution stations were not directly attacked.

The reason why the system was not bombed as a target, it is explained by the United States authorities now, is that they believed the German power grid was so highly developed that losses in one area could be quickly compensated by switching power from an undamaged part of the country.

How misleading this assumption was is only now realized. It is now learned, from on-the-spot investigation, just what bombing raids could have done to the German utility systems. The destruction of just five of the largest generating stations in Germany would have caused a capacity loss of 1,800,000 kilowatts, or 8 per cent of the total capacity, public and private. A loss of 40 per cent, the Germans have since reported, would have been dangerous. The destruction of 45 plants of 100,000 kilowatts or larger would have inflicted approximately this loss;

the destruction of 95 plants of 50,000 kilowatts or larger would have wiped out more than half of the entire generating capacity of the country; and, the Germans have now stated, a loss of 60 per cent would have collapsed the country's war economy.

How easy it would have been to cause these losses has since been determined. Analysis of attacks on 14 generating stations, of a total of 23, comprising between them about a third of the entire integrated system, has led Army authorities to conclude that a density of two-tenths of a ton of bombs per acre of plant area in every case disrupted operations for weeks and months. A density of more than four-tenths of a ton of bombs per acre made restoration a matter of from six months to a year or longer.

Had electric generating plants and substations been made primary targets as soon as they could have been brought under air attack, the Army has learned since the war, the evidence indicates their destruction would have had serious consequences to Germany's war effort.

The post-mortem on Allied bombing of enemy territory is bringing out some strange information. Not the least strange is that the bombers frequently did the most damage in ways they didn't realize at the time. Thus, in chemical production, for some reason, the raids were not directed at most plants in this field, although the results would have been catastrophic in certain instances. Vital damage was done anyway, because some of the essential production was installed in the oil producing areas, which were under direct attack. Similarly in steel production, the real damage to the industry was in loss of electric and gas utilities feeding into the steel plants.

The reports now find that shortages in steel production occurred as a result of curtailed transport, gas, and electric power, in turn resulting from bombing attacks actually directed at entirely different industries.

The German economy was powered on coal. Air attacks on transportation did not get No. 1 priority until March, 1945. Up to then, results of sporadic attacks were not conclusive. Later, they disrupted coal shipments, among other critical functions. This had a telling effect on gas and electric supplies, manufacturing, and other industrial efforts. Ultimately, 32 per cent of the total bomb load dropped on Germany was dumped on transportation targets.

In relation to city life, it was found that damage from so-called area raids, the nearest thing in their day to what happened from atomic bombing in Japan, so far as transportation was concerned and the public utilities generally, had little or no effect on war production in those cities.

The critical utility situation of Germany, even at the outbreak of the war, was due to the fact that the country had no surplus of electric energy. Even before the war, it is learned, curtailment or rationing of electric energy to industrial consumers was, on occasion, necessary.

All evidence now points to a prevailing German notion that the war was to be very short. Even in critical raw materials, it is now being discovered, the Germans had no stockpiles, or very short supplies, of many

Abstract from the United States Strategic Bombing Survey Report

Examination of the steel plants showed that although the attack damaged some blast furnaces, open hearths, and rolling mills, it was primarily effective through damage to utilities (electricity, gas, and water) and communications within the plants and to utilities and transport supplying the plants. . . .

The attack on transportation was the decisive blow that completely disorganized the German economy. . . .

The German power system, except for isolated raids, was never a target during the air war . . . partly because it was believed that the German power grid was highly developed and losses in one area could be compensated by switching power from another. This assumption, the Survey established later, was incorrect.

The German electric power situation was, in fact, in a precarious condition from the beginning of the war and became more precarious as the war progressed . . . fears that their extreme vulnerability would be discovered were fully discussed in the secret minutes of the National Load Despatcher and the Central Planning Committee.

The destruction of five large generating stations in Germany would have caused a capacity loss of 1,800,000 kilowatts or 8 per cent of the total capacity, both public and private. . . .

Generating and distributing facilities were relatively vulnerable and their recuperation was difficult and time-consuming. Had electric generating plants and substations been made primary targets as soon as they could have been brought within range of Allied air attacks, the evidence indicates that their destruction would have had serious effects on Germany's war production.

such commodities on which they were dependent for war, and which they had to import, or manufacture synthetically.

Later, when it was realized that generating capacity would have to be expanded to meet increasing needs, it proved impossible, and curtailment of 10 per cent prevailed regularly, with curtailment in the peak periods up to 30 per cent.

It is a peculiarity of the situation

that the bombing of consuming plants actually helped the electric power situation by reducing the power demand. The transmission system, extensive though it was, proved ineffective because transmission systems do not supply energy. They only move it. It is now concluded by American authorities, supported by what they found in secret records in Germany, that the loss of electric energy from bombing did not produce a greater economic effect only because there was an equal or greater loss of demand through the bombing of consuming industries.

The confirmation, in the form of secret minutes of the national load dispatcher, and many others, showed the Germans constantly worried by the prewar existing shortage of power, the difficulties of adding capacity, the limitations of the grid system, and their fears that their extreme vulnerability would be discovered.

The total nominal or name plate capacity of Germany's generating plants at the end of 1944 was approximately 22,000,000 kilowatts. Of this total, 13,300,000 kilowatts formed the so-called integrated system which was under jurisdiction of the national load dispatcher. It consisted of the public utility systems and larger private industrial generating plants connected to the integrated system. The remaining 8,700,000 kilowatts, of the total nominal capacity, consisted of private industry plants, isolated plants of differing sizes, and the national railroad system.

As the industry is aware, generating plants do not produce full nominal or name plate capacity, owing to outages for inspection, routine overhaul, and repair of equipment. Boilers are not usually of sufficient capacity to supply continuously full-load operations of all generators, among other limitations.

It is therefore calculated that the total available German capacity was nearer 16,000,000 kilowatts, and the peak load of the integrated system 9,700,000 kilowatts, which was attained in December, 1943. The integrated system produced approximately 45,000,000,000 kilowatt hours per year, of which industry consumed approximately 90 per cent. Of the nominal capacity of 13,300,000 kilowatts of the integrated system, 46 per cent was in hard-coal-burning plants, 33 per cent in brown-coal-burning plants, and 21 per cent in water-power plants.

Generating stations were interconnected through substations by a high-voltage transmission system. The backbone of the latter was a 220-kilovolt transmission line looping northward from the Swiss border through the Ruhr area, east to near Leipzig, thence south to Austria. Radiating and interlacing with this system were a number of 110-kilovolt circuits partly for collection of energy from outlying generating stations and partly for distribution of energy to large industrial consumers and to municipal consuming areas.

While the German electric power system, as such, was not a prime target, such damage was found as that at the Goldenberg generating plant near Cologne, the largest generating station in Germany. In this case the bombers were attacking a chemical works adjacent to the station. The generating plant was severely damaged

and was put out of action for two months. This happened in October, 1944. At the end of the two months only approximately 5 per cent was placed in operation, and it was estimated that it would have required about eighteen months to effect repairs for substantial production.

Numerous other plants were found to have sustained heavy damage but, in every instance, as a by-product of attack on adjacent targets. Actually, it is calculated, of a total tonnage of 1,235,609 tons of bombs dropped by the RAF, only 532 tons were dropped on identifiable German electric utilities.

Of a total of 688,010 tons dropped by the U. S. Eighth Air Force, only 316 tons were on electric utilities.

Electric energy is an essential of all modern industry. In the case of German industries some of those most vital to the war were most closely tied in with abundant electric power — magnesium, the new light metal, power for which in the case of the I.G. Farben plants, recently reported on by another technical mission, came from the German "braunkohl" but the process was electrolytic. Aluminum was another and heavy electric power user.

THE German system was vulnerable because of a shortage to start with that was never overcome; a lack of reserve capacity; the relative ease with which electric generating and transmission equipment can be damaged seriously, owing to the fragile character of much of this equipment; the difficulty of repairing damage; inability to transfer any appreciable amount of current; the dependence of industry on electricity; and the fact that there can be no electric stockpile—electric energy has to be used when produced.

How much of this applies to American utility systems is conjectural. It may be recalled that during the war, while individual plants were safeguarded against sabotage, there was relatively little importance attached to the danger of destruction otherwise. Whether newer bombing technique will be evolved that will recognize what has now been learned and apply it in future likewise remains for the future to reveal.

"THERE has never yet been a satisfactory answer to the question, 'Why should the customers of a publicly owned power plant be granted tax exemptions, when the customers of a private company must pay every known form of taxation as part of their electric rate?'

"Either publicly owned plants should pay every tax levied against private plants, or private plants should be granted every tax exemption now accorded public plants, so they could pass the saving on to their customers. The public plants haven't a leg to stand on in begging for tax exemptions not granted their private competitors. By that very act they admit they could not compete with the private plants on an equal basis."

—EDITORIAL STATEMENT,
Industrial News Review.

Government Utility Happenings

THE Securities and Exchange Commission reported on November 12th the 1935 Holding Company Act has caused a "housecleaning" and lessened demands for public ownership of utilities. Ganson Purcell, SEC chairman, said private investors have acquired $4,053,719,313 of utility properties disposed of under the "death sentence" clause of the Holding Company Act, while sales to municipalities and other public bodies amounted to $293,500,274.

Purcell presented the figures to a House Interstate and Foreign Commerce subcommittee where the private *versus* public power controversy has broken out anew during an inquiry into the operations of the Holding Company Act.

The committee, headed by Representative Boren (Democrat, Oklahoma), is inquiring particularly into the sale of electrical facilities at Omaha, Nebraska, raising a question whether the SEC should not have passed on the fees involved.

Dealing with the public-private power issue, Purcell told the committee:

> I suggest that whatever may be one's attitude concerning public *versus* private ownership, it must be recognized that the tendency toward public ownership of electric and gas utilities would be immeasurably stronger were it not for the greatly improved conditions in the electric and gas utility business which have been achieved by Federal regulation under the Public Utility Holding Company Act of 1935.

He contended demands for public ownership have been lessened because of improved service and operations of the privately owned utilities. Of the $293,500,274 of utility purchases by public bodies, he emphasized that about half, $123,140,008, was by the Tennessee Valley Authority.

THE committee session dealt principally with the question whether the SEC should have stepped into the Omaha deal and used the Holding Company Act powers to regulate fees. Boren estimated these fees were over $1,200,000.

Purcell and Milton H. Cohen, director of SEC's public utilities division, maintained the agency had no jurisdiction at Omaha because, under the law, SEC cannot tell a public agency of a state what to pay for a utility, or what may be paid in fees. Cohen said the ultimate deal at Omaha transferred the utility there from the American Power & Light Company to the Loup River Public Power District, created under state law.

Boren argued that the Omaha Electric Committee, which purchased the facilities for transfer to the Loup River District, was not a public body and SEC should have had jurisdiction on that ground.

Chairman Boren criticized Acting Chairman Leland Olds of the Federal Power Commission last month.

"I am surprised at reports that he has sprinkled holy water on a deal that stinks to high heaven," Boren said on November 7th during a committee hearing on possible revision of the Holding Company Act.

Boren said he was "personally amazed" to hear of a meeting which he said was held in Olds' office recently to discuss the proposed purchase of the electric system of the Puget Sound Power & Light Company by a public utility district.

Boren later told reporters he based his comments on an article published in the *Washington State Grange News* of November 3rd. He said this stated that prospects for early completion of the purchase of the electric system appeared brighter following a meeting of representatives of the Bonneville Power Administration, Puget Sound utility districts, Federal Power Commission officials, and members of the Washington congressional delegation.

The article stated that one of the conferees said that "an informal agreement was expressed by all parties present" as to the soundness and feasibility of the purchase, and that the meeting was in Olds' office.

Boren told a reporter later the article left the "inference" that Olds was not opposed to the "informal agreement," although it did not say Olds personally commented on the case. Olds was out of town and could not be reached for a statement.

In a recent House speech, Boren criticized the proposed purchase of the Puget Sound Company. Boren told reporters he expected to call Guy C. Myers, a New York fiscal agent who is interested in the Puget Sound sale, as a witness November 16th.

R. K. LANE of Tulsa, Oklahoma, president of the Public Service Company of Oklahoma, asked that the holding company law be revised to permit a utility company to operate integrated systems which would not be adverse to public interests. His concern, he said, was ordered by the Securities and Exchange Commission on February 16th to get rid of its gas holdings. These holdings, he said, were part of the company system and were operated by the same management and employees. The order, he declared, would result in loss of substantial economies, both to the gas and electric businesses.

Wendell Wright, attorney for the Public Service Corporation of New Jersey and its subsidiary companies, declared the act should be amended to provide that a combination gas and electric company may be in itself "an integrated public utility system."

Representative Boren on November 8th advocated revision of Federal tax statutes to curb what he terms "a tax evasion racket operating under the guise of public ownership" of utilities. He said that breaking up of the holding companies "seems to be accompanied by as many evils as was the operation of these companies."

Testimony has shown, Boren said, that promoters engineer the purchase of operating utilities by municipalities, public utility districts, "and other so-called public bodies." The promoters, he said, receive huge fees and their clients take payment in tax-free municipal revenue bonds. A large number of the utilities so purchased, Boren stated, are those being divested forcibly from holding companies.

"It's a racket," he declared.

Boren proposed that the tax law be changed to tax income from the revenue bonds of productive enterprises owned by municipalities, public utility districts, and "so-called" public bodies. He said a $5,000,000 investment in bonds of a private enterprise would net, after taxes, only $35,473 annually, while the same amount in municipal revenue bonds would yield a tax-free $122,500.

Representative Carlson, Republican of Kansas, member of the House Ways and Means Committee, said the situation "is something my committee should look into." The committee has jurisdiction over tax legislation.

As its first step toward better public understanding of problems peculiar to the public utility industry and arising in connection with government ownership and regulation of utilities, the National Association of Electric Companies has shed considerable light on the question of the adequacy of present tax charges on government-owned utilities through two reports recently submitted to Congress.

The reports, entered in testimony before the House subcommittee, were received in utility circles with approbation

since they document the contention that publicly owned utilities should be taxed more nearly as private utilities are taxed, and as they represent the first fruits of the association's recent establishment as the industry's spokesman on educational and legislative matters.

Each of the reports arrives for the first time at a dollars-and-cents estimate of probable losses to the Federal government resulting from the recent growth of the nation's nontaxable utility plant. The latest of the reports estimated that between $65,000,000 and $75,000,000 in taxes was lost to the government, from 1935 to the present, through transfers of plant to public ownership through divestments ordered under the act.

The latter report, prepared for the association by Paul Grady, a partner in Price, Waterhouse & Company, public accountants, disclosed that some 108 individual properties were transferred to public ownership through divestments, and that $350,000,000 in operating revenues was exempted from taxation as a result. Total corporation taxes on these revenues, according to the Grady report, would amount to about $49,000,000, while in another section of the report it was estimated that the reduction in dividend and interest payments due to divestments would account for an additional $15,000,000 to $20,000,000 in income tax losses.

"If these amounts are added to the estimated losses in corporation taxes, it appears that total losses in revenue to the United States Treasury during the period . . . would probably aggregate between $65,000,000 and $70,000,000," the report continued, adding that Federal tax losses in 1945, figured on the same basis, would have amounted to about $17,000,000.

The second of the two reports, prepared by the association itself, showed, in brief, that Federal revenues approaching $87,000,000 would have been available in 1944 alone, if all government-owned utilities, including municipal plants and coöperatives, had been taxable at rates applied to the income of privately owned corporations.

Estimates for prior years showed that the tax on nontaxable utilities would have been roughly $50,000,000 in 1942 and $72,000,000 in 1943. Another pertinent fact disclosed in the association's report was its showing that kilowatt-hour capacity of government-owned plant had risen by 300 per cent since 1932, while that of privately owned plant rose only about 20 per cent.

* * * *

A SPECIAL message recommending establishment of a Columbia Valley Authority was expected to be sent to Congress by President Truman in late November or early December, Congressman Henry Jackson said after conferring with White House aides on November 9th. The announcement was made by Jackson in the absence from the city of Senator Hugh B. Mitchell, who has worked for authorization of CVA ever since he entered the Senate.

The message would urge that administration of a CVA be patterned after that of the Tennessee Valley Authority, Jackson said.

As soon as the President's message is delivered, Jackson and Mitchell will introduce similar bills in the House and Senate, calling for authorization of the project and funds to carry it out. Mitchell already has a CVA Bill in the Senate, but its provisions have aroused so much opposition it has not been reported out by the Commerce Committee.

Both Washington legislators recently conferred with the President on their bills. They also have been working for several months with the President's administrative assistants on provisions to be included in their measures.

President Truman usually allows several weeks to pass between his special messages to Congress. His CVA recommendation would follow one on public health.

Since Jackson will be at the technical conference of the maritime division of the International Labor Organization in Copenhagen at the time the President is expected to send up his message, his bill will be introduced by a colleague.

EMPHASIZING that the construction of the proposed St. Lawrence seaway power project would damage the railroad industry and decrease employment, labor and management representatives of the railroads on November 7th declared their opposition to the development at a luncheon meeting in the Hotel Biltmore, New York city, attended by several hundred business and labor executives.

H. W. Fraser of Cedar Rapids, Iowa, president of the Order of Railway Conductors, described the project as "one of the great American fantasies" and declared that it was not needed from the standpoint of either transportation or power. Without knowing at this moment exactly where we were going socially, economically, and politically, he said, huge expenditures of public funds for that purpose will in the main only intensify the nation's problem.

Urging the importance of preserving the railroad industry against "unfair and unwarranted competition," Mr. Fraser said railroad employees and their families in the United States and Canada numbering more than 4,000,000 persons were dependent upon a payroll of rail carriers now running well above $4,000,000,000 annually. He continued:

> I know how these workers feel about the St. Lawrence project. I work with them and their representatives. They are on record many times in opposition to the proposed development.
>
> The St. Lawrence project is a seven months' project each year with five months—five winter months—each year in which operations would be impossible because of ice conditions. With the project completed the railroads would be in the position of standing by for seven months with a plant equipped to take over the transportation during the other five months.

William White, president of the Delaware, Lackawanna & Western Railroad, declared that "all the St. Lawrence seaway would do would be to hurt America, American business, and American labor, and to bring about this hurt we are asked to believe that it is economically beneficial for our country to pay its share of over a billion dollars for the project." He continued:

> With the national debt now about $260,000,000,000 and likely to go over $300,000,000,000 before the budget is balanced, I don't suppose another billion added to it means much. But when the other billion means fewer jobs for American railroad men and coal miners, bankrupt railroads, and loss to stockholders and bondholders of those railroads, less business for the railroad suppliers, and a deteriorated railroad service that necessarily would follow the diversion of a large volume of tonnage during seven months out of twelve, then the spending of the billion becomes a serious matter indeed.

The meeting was sponsored by the New York State Conference in Opposition to the St. Lawrence Project.

EVIDENTLY in response to the publicity resulting from the railroad labor-management statements on the St. Lawrence, Senator George D. Aiken (Republican, Vermont) accused eastern railroads and power companies of fomenting opposition to the project. Aiken spoke before the City club in Boston, Massachusetts, on November 14th. He declared that the railroads fear competition from water-borne carriers and the utilities fear cheap public power.

A proponent of the seaway, Aiken said it would benefit New England and that the remaining cost to the United States would be less than $300,000,000, of which a third would be paid by the accompanying 2,200,000-horsepower project at International Falls.

* * * *

BRITISH political writers reported a Labor government decision to nationalize the transport, gas, electricity, iron, steel, and engineering industries and to limit public investment in the luxury trades.

At the same time, the *Daily Sketch* warned editorially that as a result of the socialist doctrine of nationalization workers seem certain to lose their liberties altogether. Others foresaw complete state control by the government.

The pending bill to control investments which would refuse licenses to firms not considered helpful to Britain's general trade picture apparently is designed to favor the heavier industries.

Wire and Wireless Communication

THE Rural Electrification Administration is now openly seeking rural telephone loan authority. Until recently the position of REA on proposals to have the Federal government engage in making loans for the establishment or improvement of rural telephone service was apparently one of watchful waiting. Late in October, however, the Secretary of Agriculture, Clinton Anderson, sent to the Senate Agriculture Committee a report on the so-called Hill Bill (S 1115) now pending. This report, which evidently was prepared for the Secretary's signature by the REA staff, gives reasons why REA should be given authority to make loans for rural telephone service along lines similar to the work now performed in the field of rural electrification.

It is significant that the report finds no fault with those provisions of the Hill Bill which would encourage states, municipalities, and other public ownership groups to get into the telephone business, where public ownership is virtually nonexistent. On the contrary, the Anderson report shows an obvious intention on the part of the REA to pursue exactly the same policy with respect to rural telephone loans as it has with respect to rural electrification loans; namely, to encourage loans to nonprofit coöperatives, preferably those already having REA loans for rural electrification, where that is legally permissible.

REASONS for the desirability of REA co-ops' getting into the telephone business, as given in the Anderson report, were fourfold: (1) It was pointed out that most of the prospective rural telephone subscribers are already receiving electric service from REA electric co-ops or are likely to be so served in the future. (Active participation by REA in preparation of the Anderson report is shown here with figures to the effect that out of 33 coöperatives serving some 38,000 rural electric consumers in 18 states, 20 indicate that they would be interested in getting coöperative telephone service.) (2) Economies in joint construction and operation, such as the use of common pole lines, right of way, construction and maintenance equipment, etc. (3) General overhead economies and efficiency as a result of REA doing double duty in both the telephone and electric service fields, such as combination billing, etc. (4) The Anderson report estimates that three out of four farms are now without telephone service, which clashes with industry estimates to the effect that nearly two out of five farms are now served and 80 per cent of all farms are within "subscriber access" of existing telephone company facilities.

* * * *

E. K. JETT, Federal Communications Commissioner, said on November 12th, in an interview, that 25,000 light-weight, 2-way radiotelephones likely will be in use by the summer of 1946.

A year later the figure probably

will be 250,000, he said. Prices may range between $50 and $100 a set.

The FCC will approve rules and a licensing procedure for walkie-talkie users within two or three months, Mr. Jett said, adding:

> We think the rules should be very simple. No technical knowledge will be necessary to qualify. It should be easier for any citizen to get a walkie-talkie license than to renew his auto driver's permit. To procure a license the applicant need only show familiarity with the Communications Act and the regulations governing this service.

The rules will contain these two key points, Mr. Jett said: (1) Anyone can talk over a walkie-talkie, but no charge can be made for using one or for transmitting messages; (2) the walkie-talkie cannot be used for commercial broadcasting.

Mr. Jett said several styles of walkie-talkies probably will be produced. Some will be small, light-weight affairs weighing three or four pounds. Others will be higher-powered and heavier, for use in autos and on roof tops. Their range will be from 1 to 15 miles, depending on terrain.

Mountains, for example, sharply reduce the range.

The walkie-talkie will bring back the party line in a big way, Mr. Jett said, because the 2-way radio conversations "will be a party line in the sense that you will have to listen in on your frequency to find out if someone else is talking before starting your conversation."

But as many as 100 conversations can take place simultaneously in a single area, he explained, by using different frequencies.

Mr. Jett expects doctors, farmers, sportsmen, and explorers to make early use of the war-developed gadget, along with department stores, dairies, laundries, and other business organizations that provide delivery service.

* * * *

THE British Labor government expanded its economic nationalization program in far-reaching announcements recently to include public ownership of civilian air lines and a $120,000,000 world-wide communications network.

Almost simultaneously Health Minister Aneurin Bevan informed Commons that the government planned to control the rent of furnished houses and apartments.

Majority Leader Herbert Morrison served notice also that the government would continue scrutiny of private munition manufacturers' costs.

Government spokesmen said legislation would be introduced quickly to achieve the objectives. While Conservative members of Parliament are sure to protest several of the moves, their enactment by the overwhelming Labor majority appeared certain.

The telecommunications service now operated by Cable & Wireless, Ltd., is the communications network involved. Chancellor of the Exchequer Hugh Dalton announced that the government had decided to press for public ownership. The company operates wireless and cable circuits which link countries of the British commonwealth.

Lord Winster, minister of civil aviation, said in the House of Lords the government had decided that public ownership "shall be the overruling principle in air transport." He said there would be "fair compensation" for any material assets taken over.

Dalton said necessary legislation would be introduced "in due course."

The announcements came as the first official notice that the government was planning to extend its nationalization program beyond that announced in its campaign platform. The platform called for public ownership of the Bank of England, inland transportation, public utilities, and heavy industry.

The Exchange Telegraph News Agency reported that Cable & Wireless, Ltd., in a letter to stockholders, quoted directors as saying they considered the government's "scheme impractical" and "entertain the gravest apprehensions in regard to the setting up of the overriding authority which would control the operations not only of the British company, but also of the corporations in the dominions."

THE Milburn & Anselmo Telephone Company has filed an application with the Nebraska State Railway Commission to increase rates at Anselmo, Brewster, Dunning, and Merna. Hearing will be held December 19th in Broken Bow.

The company is asking authority to increase rates on business phones from $2.15 to $3.15; individual residence phones from $1.80 to $2.35; party residence from $1.55 to $2; rural phones in the Anselmo and Merna exchanges from $1.40 to $1.85; Dunning phones from $1 to $2.25; and Brewster rural phones from $1.40 to $2.25.

* * * *

A COMPLETE new "visual" language, an A-to-Z picture of the basic phonetic sounds in any language, that the deaf can read as a moving procession of vowel and consonant "graphs" are flashed across a screen, was demonstrated in New York city last month at the Bell Telephone Laboratories.

An engineer, deaf from birth, who scarcely could be understood by his colleagues at the laboratories a year ago, conversed freely by means of the visible speech without resorting to lip reading. Other personnel, trained a short time to read the phonetic graphs, carried on rapid-fire telephone conversations with unseen persons. An audience of newspapermen listened to the conversations over earphones and watched the visual speech. The participants, however, heard no sounds, but relied solely on what they saw on the screen.

Developed by Bell Laboratories' experts, the system is an outgrowth of work being carried on with sound analytical devices, plus the use of the cathode-ray tube, which portrays the characteristic pattern as the sound is heard.

A word group is spoken into a microphone. Electrically resolved on the visual screen, its chief characteristics are pitch, loudness, and time. When the process is made continuous these patterns travel slowly across the screen and the trained eye reads them as speech.

Low-pitch sounds, for instance, appear at the base of the moving pattern, high-pitch sounds at the top. Rising or falling inflections in speech appear wavy, or slanting. The word "we" resembles a tree bending in a high wind, slanting to the right. Reverse the sound into "aw" and it slants to the left. "Sure" is like a diving airplane. The sound of laughter resembles a row of feathers. The throaty song of a thrush is like a series of caterpillars, and so on throughout the list.

Various languages have characteristics that easily can be deciphered. The device was not stumped, even, when the word "nerve" was uttered as "noive." So, dialects are no problem.

RALPH K. POTTER of the Bell Laboratories, who explained the device, pointed out that the most obvious problem of the totally deaf person not only is to perceive the nature of spoken sounds, but to utter them again so others will understand him.

"Practice will eventually equip the deaf person with a vocabulary of patterns as extensive as he is willing to acquire, but this system goes on to convey the factors of timing and emphasis which carry much of the emotional content of speech," he said.

Mr. Potter pointed out that deaf children learn to speak only about six words correctly in the first school year, increasing to about fifty words by the third year. He compared this to the 3,000-odd words acquired by normal children in that time. The visual language device, therefore, should prove valuable in such instruction work, as well as an aid in improving the speech of the approximately 100,000 totally deaf in this country.

Two types of the machine were shown. One created permanent vowel and consonant sounds on sensitized paper rotated on a drum. The other created the continuous pattern on a moving screen one foot high and about six feet wide.

Edgar Bloom, the totally deaf Bell Laboratories engineer who demonstrated the device, astonished his hearers by the fluency with which he interpreted the picture language created by the questions asked by a young woman demonstrator.

A PREVIEW of what is expected in a few years to become a nation-wide system of "piping" television images by coaxial cable and radio was scheduled to be staged on December 1st when the National Broadcasting Company turns its television cameras on the Army-Navy football game in Philadelphia as the Empire State building station in New York city relays the sight and sounds of the contest to sets in the New York area.

That event would be the forerunner of regularly scheduled intercity pickups beginning in January, when the American Telephone and Telegraph Company will make its coaxial circuits available on a "no-charge" experimental basis for regular nightly pickups between New York, Philadelphia, and Washington, it was announced on November 13th.

The AT&T coaxial cable is now installed and operating between New York and Philadelphia, but shortly after the first of the year it will be ready for use to Washington.

Plans for the experimental use of the cable, which carries telephone conversations when not employed for television, have been arranged with the Columbia Broadcasting System, Allen B. DuMont Laboratories, and NBC. The cables will be available for each concern two nights a week, and when not so employed will be available for other experimental operation by persons and concerns such as motion-picture producers, theater owners, etc., during "an extended period."

Keith S. McHugh, AT&T vice president, explained that the Bell system has been employing coaxial cables for telephone work "on certain intercity routes" for several years, at present is in the process of extending the facilities' network, and that "ultimately" it will "span the country from coast to coast and from north to south."

Mr. McHugh said further that the coaxial cable project alone calls for an annual installation of upward of 1,500 miles, suitable either for hundreds of long-distance phone calls or television programs. In 1946 it will be extended from Washington to Charlotte, North Carolina; also Atlanta and Dallas will be linked. The following year, links will be in place between Chicago and St. Louis, while the southern route will be extended to Los Angeles. In all, the project is to be upward of 7,000 miles long and to cost some $100,000,000.

A COAXIAL cable is a copper tube as large as a lead pencil, inside of which is suspended "coaxially" a heavy copper wire. The central wire is held in place by small insulators like candy life-savers. When the proper terminal devices are attached, a single cable will conduct 480 simultaneous phone conversations or a single television program.

Heavy metal-armored bundles of six or eight coaxial "pipes" and many insulated control wires are bound together into a whole and insulated, rearmored, and reinsulated, then placed in trenches across the countryside.

The AT&T also is constructing another system for intercity television. This is by radio-relay sending and receiving units placed atop 200-foot towers spaced cross-country about 30 miles or so apart. At present such a system is being constructed between New York and Boston.

When the radio project is completed the AT&T expects to test the radio relay against the cable for efficiency of operation and use, whichever is most suited for its television and telephone lines throughout the country.

* * * *

COMMERCIAL telephone service direct to France was reopened last month for the first time since the fall of France in June, 1940, before the German armies. Two circuits were available and an official of the Long Lines Department of the American Telephone and Telegraph Company said the rush of business was so great that both circuits had been booked almost solidly for five or six days.

Most of the calls were routed to Paris, but a few were made to other parts of France. Traffic westbound across the Atlantic was equally heavy. A high percentage of the westbound calls was placed by American military personnel.

Financial News and Comment

By OWEN ELY

Integration Program Enters New Phase

(Rights of Junior Security Holders May Be Restored)

THE perennial problem of retiring senior securities of holding companies—and recapitalizing to meet the requirements of the Holding Company Act—seems to have entered a new phase due to the bull market in utility securities, which has changed the value yardsticks applied by the SEC in a number of its decisions. In about a dozen past or pending cases, most of which involved preferred stocks with substantial dividend arrears, it became almost a fixed policy to make a division of assets between senior and junior stockholders on the basis of a percentage formula. But now these formulas either may be radically revised to meet market conditions, or discarded in favor of retirement of senior securities at call price plus arrears.

The SEC has not as yet given official cognizance to the new trend, but its failure to protest against recent proposals by the managements of Standard Gas & Electric and Commonwealth & Southern to drastically amend their plans reminds one of the old adage, "silence gives consent." The pending Standard Gas plan was approved by the commission over a year ago but consummation was delayed by the issue raised by District Judge Leahy. Strangely enough, while the district court upheld the commission's approval of a "package" payment for the bonds instead of cash, the market rise in the value of the package made the court's decision obsolete and tended to vindicate Judge Leahy's position—though not his assumptions. The stockholders, who formerly agreed to the package method, are now against it because they want to obtain the increased value of the package for themselves. And this ties in with the commission's frequently expressed opinion that one class of security holders should not receive a "windfall" at the expense of another.

WHEN it finally decided the Standard Gas Case, the SEC introduced a neat device to guard against market changes. The amount of cash included in the package was to fluctuate so as to compensate for estimated market changes in the value of securities in the package. But unfortunately the device was no longer operative when the decision went to the district court for confirmation. Had it remained in effect, the present move for amending the plan might have been avoided.

It will be recalled that the plan cuts off the Standard Gas $4 (second) preferred with only one-third share of new common stock, compared with 10¼ shares for the $7 prior preference and 9 for the $6 prior preference. The common stock was wiped out, and the preferred was treated as though it were common. Under this provision, which was supported by both the district court and court of appeals without question, the $4 preferred would now have a theoretical value around $4-$5. Yet the stock has now advanced from its 1945 low of 2¾ to the recent high of 33¼. Much of the rise occurred before the news was released that the company was considering filing an amendment, and a good deal has been taken for granted regarding the benefits obtainable by the $4 stock under such an amendment.

In the case of Commonwealth, the decision of the management to file an amendment which would provide for retiring the preferred stock at about $140 (instead of the estimated value of perhaps $150-$200 which it might have obtained under the 85-15 formula) caught the market more by surprise—although a common stock representative, Mr. Snyder had already begun a strenuous fight (not supported by big corporate stockholders) in favor of a revision. However, on the day the new plan was announced after the close, Commonwealth advanced about 16 per cent in value (apparently indicating some prior knowledge) and on the following day it jumped to 4¼ compared with the 2 level of some days previous. A very liberal appraisal of the company's future earning power, as applied on the new basis, might warrant a price around 4, it is estimated.

RECENTLY the SEC, after considerable delay, gave its final approval to the Northern States Power plan, as amended in certain particulars. But at about the same time the class A stock, which had been selling quietly around 18-19 for several months and might be worth around 20-25 under the plan, began a spectacular advance to its recent high around 40. Here again there was apparently a sizable "leak" as to the plans of a stockholder group to call for revision of the plan. This came into the open at a recent hearing before the SEC, where a preferred stockholders' group sought permission to obtain a list of stockholders for the purpose of supporting the plan against anticipated attack in the courts by the class A stockholders, and at the same hearing counsel for a new group of class A stockholders admitted that this was the case.

Moves are also on foot in one or two other cases, less far advanced, for application of the method of retiring the senior securities by call. (The payment of par plus arrears now appears "out," due to the American Power & Light decision discussed elsewhere in this department.) While of course it is possible that the SEC may not be in sympathy with these proposed basic changes in integration plans, the fact that no official comment has yet been forthcoming is construed favorably marketwise.

Some who guessed right regarding the new trend have gained substantial market windfalls. Stockholders of bankrupt railroads who hoped for similar recognition of their claims have, however, been "wiped out" by the ICC.

SEC Holds Call Premium Warranted by Market Worth

ON November 1st the SEC denied the long-pending application of American Power & Light to retire its bonds at their face value. This appeared to be, in effect if not in theory, a reversal of earlier decisions by the commission such as the United Light & Power Case. (See "Methods of Retiring Senior Securities of Holding Companies" in this department, October 11th and 25th issues.) Two institutional holders of $1,721,000 bonds participated in the proceedings, filing briefs against the company's plan as unfair to bondholders.

In explaining its present viewpoint, the SEC took a more liberal view of the "rights" of bondholders, quoting a Supreme Court opinion of Mr. Justice Douglas that fair and equitable treatment requires that a security holder should receive "in the order of his priority . . . from that which is available for the satisfaction of his claim the equitable equivalent of the rights surrendered." The commission admitted that retirement of the bonds cannot be considered voluntary, and that normally the bonds would not be entitled to receive the call premium as such. Nevertheless, in considering the rights of bondholders in an involuntary retirement of bonds, consideration must be given to contractual rights embodied in the interest rate, maturity date, and other provisions. "Determination of the 'equitable equivalent of the rights surrendered' requires an analysis of the degree of certainty that the obligor will

perform its commitments under the contract. Conscientious endeavor to give debenture holders the equivalent of what they surrender, in order to provide fair and equitable treatment for them, requires us to weigh their contract rights in light of the risks that the borrower will not duly and punctually live up to the contract. This involves examination of the assets and earning power of the obligor."

THE argument was advanced that the high rate of interest and the long maturity add to the intrinsic value of the bonds under present conditions, and that payment at the principal amount would deprive a debenture holder of substantial value and would transfer this excess value to the stockholders, giving them a windfall.

In support of this argument it was pointed out that, with a discount rate of 6 per cent, the right to receive the principal of $1,000 in the year 2016 would have a current value of only $15, so that the principal claim of bondholders in this case is the right to receive 6 per cent interest for seventy-one years. To deprive bondholders of the 10-point premium over face value would thus result in substantial injustice, which is contrary to the intent of Congress as reflected in § 11.

The commission quoted at length from the Supreme Court decision in Otis & Co. *v.* SEC (which involved the treatment of United Light & Power preferred). The Otis Case, said the commission, has established the principle that the *present investment worth of a security should be the measure of its participation in a § 11(e) plan providing for winding up of the company.* While the Otis Case involved determination of relative rights of preferred and common stockholders, the commission held that the reasoning of the Supreme Court was also applicable to the rights of debt holders in relation to the junior security holders. In reorganizations under the act, debt holders' claims should not be considered as matured any more than those of preferred stockholders.

In the United Light & Power and North American Light & Power cases the commission and the courts held that a retirement of debentures necessitated by § 11 was not the kind of optional call which would bring the redemption premium provisions into operation. Debenture holders had claimed that they were entitled to compensation for the termination of their investment, but *no effort had been made in those cases to relate such compensation claim to the value of the debentures and to prove that debenture holders' interests in the companies as continuing enterprises were worth more than the face value of their claim.* While the interest rates on the United Light & Power debentures were 6 per cent and 6½ per cent, "no facts were adduced to show, nor did the records indicate, that 100 was inadequate compensation."

THE commission indicated that it had gained in wisdom as the result of the consideration of a large number of later cases, and any "automatic rule of 100" would produce inequitable results. Each case must be considered on its own merits. The trend of court opinion is also in this direction, the circuit court of appeals having held in the Standard Gas Case that "it was not incumbent upon the commission to reduce the result to dollars and cents in the process of valuation . . . two factors that bulk largest in determining the 'equitable equivalent' . . . are safety and interest rate."

American Power & Light, in supporting payment at par, adduced contract rights involved in various common law cases, but the commission held that common law precedents did not apply in the present case, quoting Justice Frankfurter to the effect that "the commission is not bound by settled judicial precedents."

American Power & Light had also called the commission's attention to the repurchase programs by which some of its bonds had previously been retired. In the first case, the commission allowed repurchases in the range of 95-100, and in the second instance on a scale-down basis beginning with 106. The commission held that approval of these programs was

based on the fact that sales were entirely voluntary by holders. A number of other voluntary purchase programs had been authorized without establishing individual precedent thereby as to the method of retiring the remaining issue.

In analyzing the investment position of the debentures, the SEC stressed the fact that at the end of 1944 cash and subsidiary debt securities aggregated 1.63 times the principal amount of the company's debentures, and there was a still larger amount of value in stockholdings of subsidiaries (based on adjusted underlying book value after all write-offs). The commission also presented tabular data regarding over-all system coverage, and parent company coverage, of interest requirements, as evidence that the bonds had investment value in excess of their face value. Claims of expert witnesses for American Power & Light, citing historical evidence to support face value, were rejected by the commission. One witness failed to take into account improving earnings, lower money rates, and prospective refundings of subsidiaries' senior securities as well as other important factors.

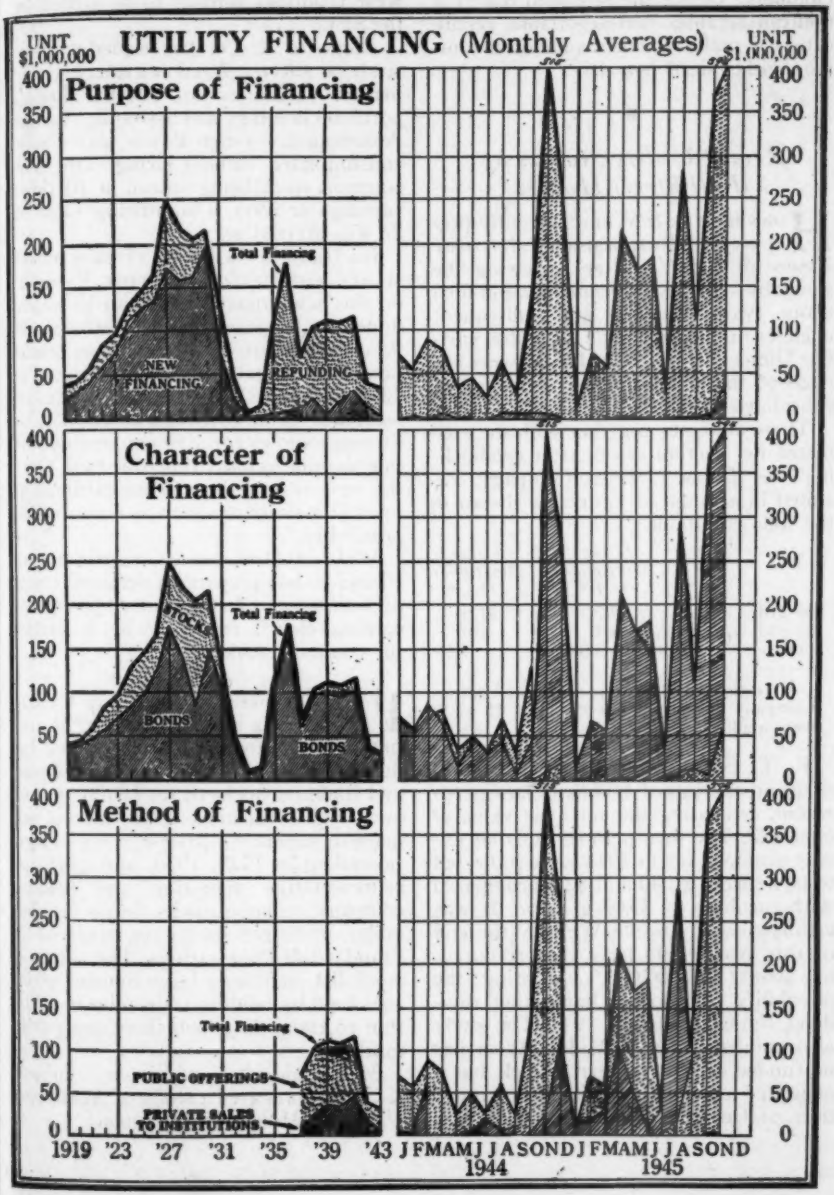
The crucial issue involved, said the commission, "is whether the contract interest rate of 6 per cent fairly reflects the degree of safety enjoyed by the debentures. If the maximum interest rate justified by the risks is as low as approximately 5.45 per cent, the debentures would have a value of 110 . . . It is true that American's debentures are not of the same investment quality as top-grade public utility first mortgage bonds which presently sell on less than a 3 per cent basis. However, we have no hesitancy in concluding that the maximum interest rate justified by the risks assumed by the debenture holders is less than 5.45 per cent." Accordingly, the commission fixed a price of 110 for the American bonds but held that "the precise amount which the Southwestern debentures should receive (in no event less than 110) would depend on the time when they were paid." This indicates that the Southwestern debentures (noncallable until February, 1947) would currently have a value slightly higher than 110, based on the interest rate of 5.45 per cent.

JUDGE Healy presented a vigorous dissenting opinion. He called attention to the company's inconsistency in fighting the dissolution order in the Supreme Court while at the same time it argues before the SEC that it is forced to dissolve and therefore need pay no debt premium.

Nevertheless, he believed that the company would be forced to dissolve and that the debt payment is necessary as an aspect of dissolution. Such dissolution being involuntary, debt holders would not be entitled to the premium under the terms of their contract. There are no provisions in the contract defining rights in the case of involuntary dissolution, in which respect the case differs from that of United Light & Power preferred.

Judge Healy rejected the majority doctrine that the bondholders' claim is related to the present investment worth of the bonds; he held that they are evidences of debt, and the debt is $1,000 per debenture. In the past, he contended, both the commission and the courts have excluded the idea that a creditor's claim (in involuntary dissolution) is not the debt itself but its investment worth. He quoted a Supreme Court statement—"a requirement of dollar values placed on what each security holder surrenders and what he receives would create an illusion of certainty where none exists and would place an impracticable burden on the whole reorganization process."

Judge Healy felt that the majority quotation from the Otis Case misconstrued and misapplied that decision, and he also quoted at considerable length from previous commission decisions and rulings. While admitting that the bonds now have an improved investment value, he attributed this in substantial degree to the heavy sacrifices of dividends by preferred and common stockholders, which fully explain the strong current position. Hence in his opinion it is unfair to penalize stockholders still further by requiring them to pay a premium to bondholders.


UTILITY FINANCING (Monthly Averages)
UNIT $1,000,000
Purpose of Financing
Total Financing
NEW FINANCING
REFUNDING
Character of Financing
STOCKS
BONDS
Method of Financing
PUBLIC OFFERINGS
PRIVATE SALES TO INSTITUTIONS
1919 '23 '27 '31 '35 '39 '43
J F M A M J J A S O N D J F M A M J J A S O N D
1944
1945

The judge also criticized as a "Rube Goldberg" device the proposed use of a nontransferable, non-negotiable certificate—"it makes the debt a financial zombie, neither dead nor alive."

Recent Utility Studies by Wall Street Houses

HORNBLOWER & WEEKS recently prepared "A Reappraisal of *American Power & Light*." After reviewing the company's proposed recapitalization filed about two years ago and subsequent changes in the company's portfolio, various "times earnings" yardsticks were applied to the average 5-year earnings of subsidiaries.

These amounts, together with the estimated net current assets after establishing the Texas Utilities Company, resulted in a range of figures as shown in the following table:

	*Using Multiplier Of 12**	*Using Multiplier Of 15**
$6 pfd.	$97	$121
$5 pfd.	81	101
Com.	5.80	7.19

*In estimating the value of Texas Utilities Company, price earnings ratios of 15 to 18 were applied.

F. T. Sutton & Company has prepared an analysis of *Middle West Corporation*, estimating the intrinsic value at over $27. The firm pointed out that excess profits taxes in 1944 were indicated to be between $2.40 and $2.80 compared with earnings of $1.07 a share. It was estimated that Middle West by the end of this year would have cash resources of about $18,000,000, indicating the possibility of another liquidating dividend similar to that in 1944. The study also pointed out that Middle West has no funded debt or preferred stock, but it neglected to mention that important questions of Deep Rock subordination (particularly in reference to Central & Southwest Utilities) remain to be settled by the SEC.

Abraham & Co. has issued a brief study on *Electric Bond and Share*. Using market valuations for Electric Bond's portfolio holdings and assuming that the American & Foreign Power plan will be consummated without change (the new common stock being valued at 10 times earnings or $36), a liquidating value of 23 was arrived at.

Ira Haupt & Co. issued a 7-page analysis of *Columbia Gas & Electric*. Earnings on the new common stock to be issued under the proposed plan are estimated at 93 cents a share (without excess profits taxes), and capitalizing these earnings at 13 times, plus $1 for the rights, gives an estimated value of $13. The estimate of earnings allows for a 10 per cent decline in gross due to loss of the war load. Over the next two or three years earnings of over $1 a share are seen as a reasonable possibility.

Walston, Hoffman & Goodwin of San Francisco has prepared a detailed review of *California Electric Power Company*, naming eleven reasons why it favors the common stock.

PAINE WEBBER, JACKSON & CURTIS has issued a brochure on the "Peacetime Outlook for the Electric Utility Industry" with tabular data on preferred and common stocks of the leading power and light companies. Comparisons are made between the price-earnings ratios prevailing in 1929, 1936, and 1945 for representative operating and holding company common stocks. In the detailed tables, preferred stocks are tabulated by Standard & Poor ratings. The common stock list includes a large number of issues held by holding companies in addition to those in which there are public markets.

M. C. Zaidenberg of Simons, Linburn & Co. has prepared a study of *Northwest Utilities* (Middle West system).

What Others Think

The Published Life of Paul Walker

A BOOK on Paul Walker, sole remaining charter member of the Federal Communications Commission, has recently been published by Lancaster Press, Inc., of Lancaster, Pennsylvania. The book, entitled "Paul A. Walker," is the product of Walter B. Emery, an administrative assistant of the FCC staff.

The issuance of this book (105 pages) was coincidental with the induction on November 16, 1945, of Mr. Walker into the Hall of Fame by the Oklahoma Memorial Association as one of the four distinguished Oklahoma citizens who have made outstanding contributions to the state and nation.

Mr. Emery's biography of Commissioner Walker is a brief but comprehensive summary of the career of one of the most outstanding regulatory officials in the American utility field in recent years. Walker's biography will especially interest the telephone industry because of the particular attention which Commissioner Walker has given telephone matters, beginning as a member of the Oklahoma commission, and since his appointment to the Federal Communications Commission in 1934.

Emery describes Walker's boyhood as the son of a farm family of Welsh-Quaker extraction in western Pennsylvania. His commencement day address for his high school graduation class on June 8, 1889, was, significantly, an attack on the evils of monopoly, and won for Walker a scholarship to the University of Chicago. Before completing his own college course, Walker found it necessary to augment his meager income by part-time teaching at a high school in Charleston, Illinois. This experience launched him into educational work following his graduation, and he became an early advocate of the idea of progressive education and school reforms generally.

WALKER first went to Oklahoma in 1905 to become the principal of a high school at Shawnee. He also managed to continue his double duty activity to the extent of completing a law school education at the University of Oklahoma while teaching.

After a few years of legal practice, during which he ran unsuccessfully for county judge, Walker joined the newly formed Oklahoma commission in 1915 and for many years took an active part in utility rate cases before that commission and in the courts. In 1930 Walker was elected a member of the Oklahoma commission and shortly after its chairman. While on this board, Walker attracted the attention of President Roosevelt, who appointed him one of the seven original members of the FCC.

Emery's book devotes a chapter to Walker's work on the FCC, not only with respect to the well-known Bell system investigation (sometimes called the Walker investigation), but also his fight against radio monopoly.

Although modest in size and scope, Emery's book is a faithful and interesting factual guide and sympathetic commentary on the life of the outstanding figure in the historical span of American regulation of public utilities. Walker has seen regulation grow from its infancy. He has neither illusions nor defeatist ideas about the possibilities of commission regulation.

Altogether, Emery's book indicates Walker's conviction that—given a reasonable degree of honest and able administration—the American concept of public utility regulation can and has worked effectively. But Walker, who since the

death of the late lamented Joseph B. Eastman is probably the dean of commission regulation (as far as the public utility—as distinguished from the railroad—field is concerned), honestly believes that regulation must be continually progressive — continually changing to meet the constantly shifting requirements of changing technology, and the changing political-economic background against which the modern public utility service must function. He is particularly keen to achieve practical and understanding working coöperation between state and Federal commissions.

—F. X. W.

The Goal of Universal Rural Electric Service

In the August issue of its quarterly bulletin (published for its stockholders and employees), Idaho Power Company tells a story of farm electrification which reveals a steady growth and large usage of electric service among rural customers.

The company states that complete farm electrification in its territory—southern Idaho and eastern Oregon—in the next few years is its aim. In accomplishing that goal, it has set out to increase the use of electricity on the farm to at least double what it is at present. This, the article says, will require intensive effort, for it will mean improving "by 100 per cent a farm utilization of electric service which already is one of the highest in the nation."

When the Idaho Power Company came into existence twenty-nine years ago, and took over five predecessor companies, there were 440 miles of distribution lines to farms in the system. Extending this type of service gradually over the years, the bulletin discloses, the company now has 5,335 miles of rural lines which serve 20,646 rural customers. This, it is noted, is about an 80 per cent saturation.

A policy of uniform rates for both town and rural customers is maintained, and the reasons for this are thus set forth:

> The historic theory of farm electrification practiced by Idaho Power Company, which includes the adoption of uniform rates as between town and farm customers, is based upon making available to farms the advantages of existing electric facilities in the towns. In other words, electric rates are based upon the cost of rendering service; therefore, the farm rate is based upon incremental costs of extending that service from town to country, and, although the number of customers per mile of distribution line in rural areas is much smaller than in the confines of a municipality, the incremental cost of extending the service is likewise much less than the original installation for the town, and provides the justification for uniform rates.

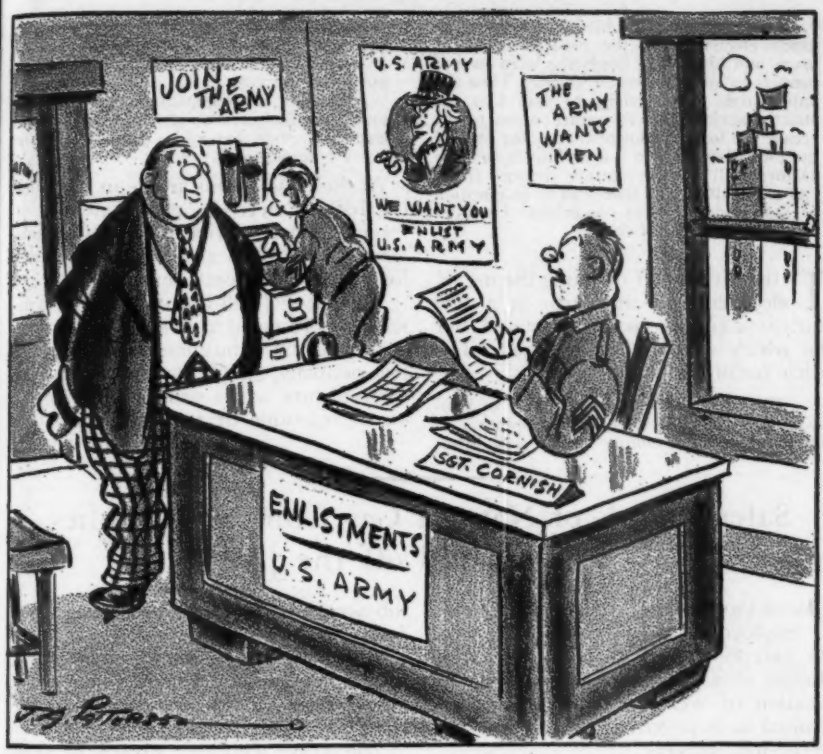
The extension of electric service to the country, it is stated,

> . . . has followed the pattern of concentric circles made by throwing a rock in still water—farms nearest to towns were usually the first to be served. Every time a line was built to a farm area the circle was widened by a few miles, thus making possible the additional extensions which gradually reached into the most remote valleys. This process was near to completion in the territory served by Idaho Power Company prior to the war. The next few years will witness the extension of electric lines to the natural boundaries of that territory and a retracing of steps to pick up potential customers who may not have wished electric service earlier.
>
> During the war years there has been an accumulation of service requests which could not be satisfied. At the present time the company has approximately 600 miles of rural line construction scheduled . . .

As to the statement that farm use of electricity on the company's lines is high, this information is given:

> Kilowatt-hour use by the farm customers of Idaho Power Company, previously mentioned as being one of the highest in the nation, showed an average of 2,656 kilowatt hours for the twelve months ended July 31st. This does not include the service of irrigation pumping, but is confined to normal domestic and farm uses. The average price paid for the service during the same period was 2.27 cents per kilowatt hour, a cost which has steadily decreased over a period of years.

WHAT OTHERS THINK



"YOU SAY, MR. KRISKOWSKI, THAT YOU COME FROM A LONG LINE OF POLES. H'M-M. I THINK YOU MIGHT DO WELL IN THE SIGNAL CORPS"

Commenting upon the wide variety of electric appliances used in farm homes and for farm work, the bulletin says:

> . . . it is estimated that 60 per cent of the farm customers use electric cooking and 30 per cent electric water heating. The saturation of electric refrigerators is probably higher than for electric ranges. Electricity makes possible the use of pressure water systems, which in turn bring modern plumbing to the farm.
>
> For the farm customer who does not have a pressure water system, the company has an electric water heater known as the "Idaho farm water heater" which it developed in 1927 and had manufactured locally. Hundreds of them were sold and are in use.
>
> In an area where dairying is a leading industry, farm electrification means lights for the barn, milking machines, separators, running water, refrigeration, and other invaluable services. Uses for electric motors on the farm are innumerable.

To take the story of electric service to every community in its territory, Idaho Power Company since 1935 has used a trailer fitted out as an all-electric kitchen. The exterior is designed to resemble an attractive cottage; the interior is arranged to feature a complete electric kitchen and laundry, with room for a demonstrator and an audience of twenty. Thus, the bulletin states,

> . . . Trained home economists were able to reach and be heard by farm women in the most remote communities, and the coach became a county fair exhibit in the fall of the year. At least 50,000 people visited the coach to see demonstrations of electric appliances.

That the farm user of electric service is, potentially, a prospect for about twice as many kilowatt hours as his city cousin is pointed out, the reasons being:

> . . . In this modern day his home requires as much electricity as the modern home in town, and his family needs the labor-saving benefits to an even greater degree. Then the applications of electricity to uses that are strictly agricultural in nature serve to increase the use of kilowatt hours far beyond the total necessary in town. This means the farmer will buy utilization devices if he can afford them, and there can be no question of that under present conditions. He can't afford to be without them.

THE objective of doubling the use of electricity on the farm in a few years is a sizable goal, it is stated, but one which can be accomplished. The article continues:

> . . . The records show how the price of kilowatt hours can be reduced as consumption increases, so the doubling of use will result in a much smaller increase in total cost to the user. And the benefits to be derived from the liberal use of electricity will far outweigh the cost.
>
> Altogether, the company definitely intends to blanket the territory it serves and provide electric service for every purpose and for every potential user.

At the close of this article in its bulletin, Idaho Power Company states that it "wants electric service to be as truly universal in the rural area as rural free delivery has made postal service."

This story (well illustrated with farm scenes), presented to its stockholders and employees by a business-managed electric company, should give them a pretty clear picture of its progressive policies on the question of farm electrification.

—R. S. C.

Safety Work of Natural Gas Company Applies Both on and off the Job

PROGRAMS of safety first education of employees are the rule rather than the exception in industry these days. Studies of accident prevention and application of well-organized plans have resulted in improved safety records for on-the-job workers.

One public utility company has broadened the field of its safety work and carried it into the homes of its employees. The results of this off-the-job education have been helpful both to the employees and to their families.

In a recent issue of *Executives Service Bulletin*, published by Metropolitan Life Insurance Company, is an article by C. L. Hightower, safety director, United Gas Pipe Line Company, Shreveport, Louisiana, telling of the methods and accomplishments in this broad safety program.

Among oil and gas company employees, Mr. Hightower states, "the ratio of off-the-job fatalities to fatal occupational injuries is almost two to one, which means that about twice as many workers are killed in highway, home, public, and sports accidents as lose their lives from accidents on the job. Off-the-job accidents also take their toll in nonfatal injuries ranging in seriousness from a few days in the hospital to permanently crippling and disabling cases, all of which cause loss of man-hours of work."

The writer adds that when it is taken into consideration that many members of employees' families are killed or injured in highway, home, or sports accidents, the importance to every worker of off-the-job safety can be appreciated. As to his own organization, he says:

> Experience . . . has demonstrated to us that the well-rounded industrial safety program should be directed toward the prevention of accidents on streets and highways, in public places, and in the home, as well as on the job, if effective and lasting results are to be obtained. At first glance, such a widespread and diversified problem seems to present an almost impossible task. However, once the industrial executive is impressed with the need of off-the-job safety efforts and develops sufficient interest to take part in the program, a workable procedure can be developed and applied.

IT is pointed out that in the centers where the company does business every effort has been made to coöperate closely with community safety programs

in the interest of off-the-job accident prevention. It is noted that

> . . . direct support and participation by industry and industrial executives in these activities can often coördinate the efforts of local groups to such an extent that the results obtained are indeed remarkable. Accomplishments through such programs in cities like Memphis, Dallas, and Lansing give concrete evidence of what can be done when everybody works together in applying a well-developed and coördinated plan.
>
> In the field of individual employee training to guard against off-the-job accidents, we have found that industry can do just as effective a job as it has done in occupational accident prevention. In this phase of the work the full force of our organizational setup is used to give the story of home, public, and highway safety in such a manner that the individual worker can apply it to himself, take it home, and pass it on to his family.

As to the methods adopted in carrying out this program, the writer says:

> We have used for years a comprehensive safety manual that provides executives, safety engineers, and operating supervisors with reference material relating to industrial safety organizations, and supplies information for use in conducting safety meetings composed of groups of employees, as well as foremen.
>
> For the sake of convenience the book is divided into four parts. Part I deals with the organization of an accident prevention program, emphasizes the important place of management (a vital factor in our performance), accents the part to be played by supervisors and workmen in the program . . .
>
> Part II includes prepared speech material and discussion outlines suitable for use in employee meetings. Fundamental problems of accident prevention are featured in the various subjects covered, in this way inspiring general interest . . .
>
> Part III provides discussion outlines and a limited amount of speech material for use in conducting foremen's meetings. . . .
>
> Part IV includes a number of reference tables which the average safety engineer or operating supervisor may have occasion to consult in the ordinary course of his work.

In the preparation of the manual, the off-the-job material was blended into the general content, with the result, Mr. Hightower says, that it is regarded as a normal and essential part of the entire program. To illustrate, he noted that in Part II, in the speech material and discussion outlines for employees' meetings, there are included such items as winter driving, scalds and burns in the home, the Glorious Fourth, poisons and antidotes, and home accidents.

As to the *modus operandi* in implementing this safety program, these details are outlined:

> Once a year we draw up a program that schedules by dates the meetings to be held with the various operating departments during the ensuing twelve months. A special subject is featured for each monthly meeting throughout the system. . . .
>
> The "safety meeting material" bulletin is used for sending out these prepared outlines. Copies of the bulletin, as well as copies of the annual schedule of meetings, are distributed to each supervisor and to the chairman of the safety meeting. Upon receipt of the bulletin for the following month, the foreman or chairman assigns subjects to individual employees for discussion. These assignments are made well in advance of the meeting in order that the employee may have an opportunity to study the material and prepare himself on the subject. As a general thing, questions are included in order to bring the entire group into the discussion.

By way of illustration of this procedure, reference is made to the outline of material for the June meeting, which was devoted to home canning:

> . . . The three methods of home canning were described briefly, this followed by a statement that the principal hazards are scalds and burns. Next in order came a series of ten questions on the canning operation, each accompanied by an answer which, if carefully observed, will prevent accidents. The June material also contained "first-aid questions" relating to the hazards of swimming, and emphasized first-aid treatment for one who has met with an accident in the water.
>
> The "safety meeting material" for last May called attention to some of the hazards that might be met on a family picnic, discussed dangers that may be encountered at unimproved swimming holes, and gave advice as to the critical points to be checked on the family car.

Then the writer mentions several "hazards" upon which comment is made in the safety meeting material. Among them may be noted:

> . . . careless or improper use of gasoline. It is a matter of record that one in every six accidental deaths in the United States is caused by burns, explosions, and fires, and many injuries of this type are traced to the misuse of gasoline.

> Traffic safety is another most important consideration, presently made more important by the fact that vehicles are wearing out at a rapid rate, that replacement parts are difficult to obtain, and that good mechanics are hard to find. Furthermore, tires are wearing thinner, street and highway surfaces are showing the effects of man-power and materials shortages. . . The matter of falls in the home is given its share of attention. Some 15,000 people are killed each year as a result of falls at home, and thousands more are temporarily disabled or crippled. Our discussions accent the fact that the primary causes are poor housekeeping, indifference, and neglect, and we make it a point to remind employees of what can be done to eliminate those hazards in their own homes.
>
> Pedestrian hazards, too, are on our discussion list. We remind our people that all of us are pedestrians at one time or another, and that we can do our part to avoid the mistakes which accounted for so many deaths and injuries last year.
>
> In addition to the subjects named, we introduce discussion on the hazards that attend hunting, trimming of trees, use of ladders, infection from home accidents, and home fires.

SINCE the inception of the company's organized safety program in 1930, the article states, continuing consideration has been given to off-the-job accident hazards. Beginning in 1939 this phase of safety work was included as a regular feature of the employee group meetings. It is noted:

> . . . While accurate records on all off-the-job accidents involving employees have not been maintained, the records are complete as to fatal accidents and to total and permanent disability cases. For the 5-year period preceding 1939 there was a total of 23 such cases, or an average of approximately 4½ per year. For the five years since the off-the-job safety program has been intensified there have been seven cases, or an average of slightly less than 1½ per year. This reduction does indicate that progress is being made through a discussion of home, highway, and public hazards at our group safety meetings.
>
> There is no basis for comparison on injuries suffered by the members of employees' families, but we feel that information developed through our safety meetings is being passed on by employees to their families, and that wives and children are also profiting from off-the-job accident prevention activities.

The article by Mr. Hightower closes with the interesting comment that a by-product of making off-the-job safety an integral part of the employees' safety program is the effect on employer-employee relations. He says:

> . . . When the worker realizes that his company is concerned with his welfare off the job, as well as on the job, he cannot help but be impressed by the fact that he is a partner in the enterprise, that he is helping to make the business go, and is sharing, too, in the benefits that result from an understanding and coöperative partnership.

The story outlined in this article, of the coördination of occupational and off-the-job accident prevention in operation over a period of years, indicates a progressive approach to employer relations and welfare, on the part of a business-managed public utility company.

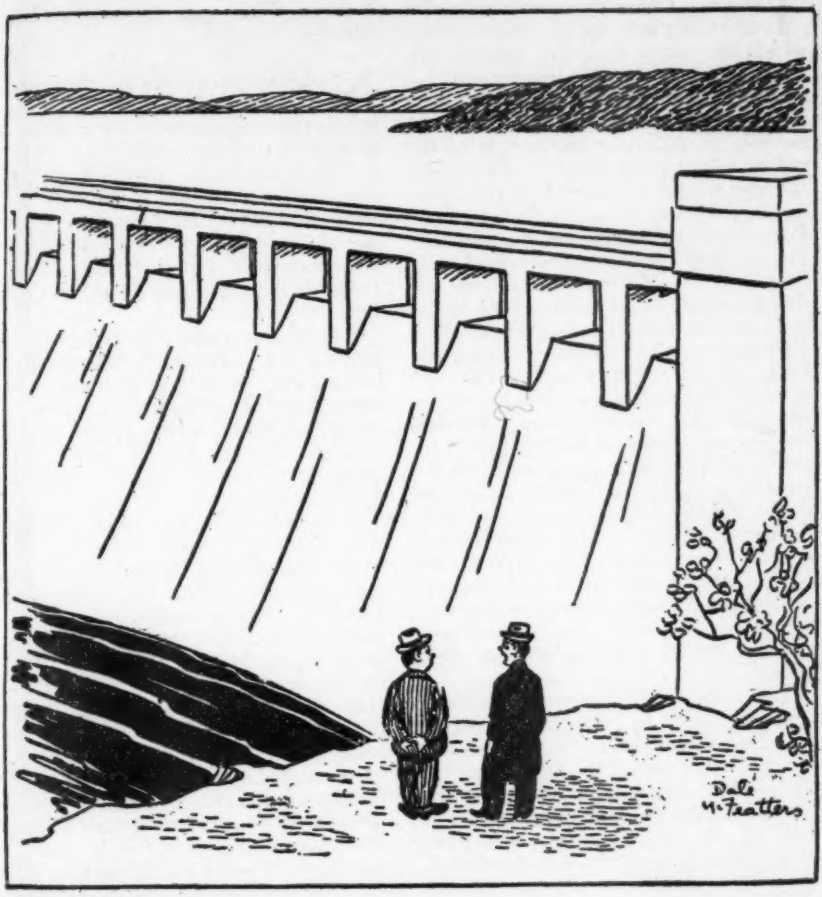
While the methods and policies described apply, in this instance, to a company engaged in the natural gas business, they would appear to be equally adaptable to electric, transit, telephone, or water utilities.

—R. S. C.

New Plan for Utility Appliance Financing Announced

A NEW plan for the financing of household electric and gas appliances has been developed by The Chase National Bank of the City of New York. Reflecting the increased interest in indirect consumer financing by banks, the step is significant in that this large commercial bank is prepared to participate through operating utility companies in this type of business.

Known as The Chase Confirmed Instalment Paper Credit, the plan is available to utilities throughout the nation. It is equally adaptable to companies which will sell merchandise directly and to companies which will coöperate with dealers



"THE BEAVERS AROUND HERE POSSESS AMAZING SKILL!"

by helping them to finance their sales of appliances. It possesses a great deal of timely interest because the desire of utilities to build postwar load coincides with the vast reservoir of pent-up demand of their customers for both replacements and new household appliances, the cost of which, it is estimated, will run into billions of dollars.

The plan has been tailor-made to fit the requirements of most utility operating companies. It is logical that such a plan was developed by the Chase, since this bank has built up and maintained a completely integrated public utilities department with operating engineers, lawyers, and statisticians, during the past fifteen years. For several years prior to World War II the Chase recognized the need for bank financing in the appliance field and it set up an organization to function along conventional finance company lines, but made available lower cost money, as it recognized the high credit of utility companies. World War II, of course, put an end to these activities.

THE new Chase plan provides for the establishment of a credit under which the utility company may receive advances at its election up to a dollar amount specified in the credit. There is no commitment fee for the credit and there is no obligation on the part of the utility company to borrow. The credit specifies a rate of interest firm for a year to be paid on the actual funds borrowed. Borrowings under the credit are repayable without penalty at the utility company's option. The utility company under this credit is required to hold its instalment paper unencumbered in its portfolio and to make a monthly report to the bank, on a form provided, of the total amount of paper owned by it, with a statement that not less than a specified amount comprises qualifying paper, together with a confirming statement of the amount owed to the bank under the credit. Qualifying instalment paper is defined under the credit to mean any evidence of indebtedness (conditional sales contract, lease, etc.) payable in not exceeding forty-eight approximately equal monthly instalments, of which not more than two such monthly instalments are in arrears.

The same monthly report provides a space for the utility company to apply for an advance, which within the limits of the credit may be for the face amount of its eligible paper held (including the finance surcharge). It makes no difference to the bank whether such paper arises from the sale of merchandise by the utility company or whether the merchandise has been sold by dealers as long as the utility company owns the paper.

There is no pledge of instalment paper by the utility company and the utility company is obligated to repay (except under termination of the credit) only when it is necessary to reduce the unpaid balance of the advance to the face amount of qualifying instalment paper owned by the company. Thus the credit remains in effect from month to month and may continue from year to year until terminated.

NO promissory notes are required for advances. Until the credit is terminated, the company may elect to use all or any part of the funds available to it, but upon termination by either party the company has the right to elect the privilege of repaying its remaining balance due the bank in consecutive monthly instalments over a period not exceeding three years from such date of termination.

The Chase credit is automatically renewable unless and until either the utility company or the bank gives notice of termination as of any anniversary date. The conditions of the credit continue in force after termination for the period of repayment except the right to apply for new advances.

A great many utility executives believe that the utility company is the best judge of its customer's credit and that the company's regular billing and collection departments can service the paper most economically. The acquisition of instalment paper, whether direct or through dealers, permits the company to exercise reasonable surveillance over the type and quality of appliances offered to its customers, and, since the company is primarily interested in maintaining satisfactory customer relationships and in promoting the sale of its services, it may direct its collection efforts with this in view. By reason of its recognized credit standing the company can obtain the necessary funds to carry this paper on a low-cost basis. It can obtain under the Chase plan not only the cash sales price of the appliance, but the finance surcharge, it need not utilize any of its normal working capital, its ordinary credit line should not be curtailed, and with an adequate surcharge it can obtain funds which should cover in advance all costs of billing and collection and losses arising through repossession.

¶ *"No industry or occupation exists in a vacuum. Changes in one important sector of an economy . . . are soon reflected in an ever widening area."*
—EDITORIAL STATEMENT,
The New York Times.

WHAT OTHERS THINK

Property Records to Increase

AMERICA's industries are likely to find merit in the use of physical property records in the near future. In fact, such records are likely, in many instances, to become an indispensable instrument in a successful corporation.

This is the conclusion reached by C. V. Armstrong, formerly research engineer for the Iowa Engineering Experiment Station, following an intensive study of property-record systems in use throughout the United States.

Despite the prescription of property records by many regulatory bodies, little information concerning their worth or practicality has been available to the general public.

It was to make such information available that Armstrong's study was undertaken.

The engineer found that enterprises benefiting most from the use of property records are those which have a large investment in physical property. Public utilities, which usually fall within this classification, are finding property-record systems particularly worth while. On the other hand, concerns which have relatively small property investments have less need for property records.

THE cost of installing a system of property records was found to vary with the type of business or industry, the size of the company, the nature of the property, the type and availability of the information recorded, and the experience of the recording staff.

For an electric utility it was found that the cost of installation normally should not exceed one per cent of the original investment in the property recorded. The initial installation should be materially lower for manufacturing concerns and other enterprises having their property investments concentrated in large units or small geographical areas, and when the records are established by experienced personnel operating under efficient management.

It was found that the cost of installing and maintaining property records can be materially lowered, without unduly hampering their usefulness, if the property classification does not demand undue detail for minor units of group property for which the investment per unit of property is relatively low.

The experience of companies who have property-record systems shows that property records can aid greatly in providing an understanding of the complexities and possibilities of the company's physical property. Such an understanding is helpful in complying with governmental and special requirements with a minimum dislocation of industrial profits.

Armstrong's complete study, which includes an explanation of accounting techniques used by companies maintaining property records, plus detailed information on their practical installation, has been incorporated into a bulletin recently published. Single copies of the bulletin, No. 160, "Industrial Property Records for Accounting and Valuation Uses," may be obtained without charge from the Iowa Engineering Experiment Station, Iowa State College, Ames, Iowa.

¶ *". . . there are still men who want to mix the ideas of individual liberty, responsibility, and equal opportunity for all with the idea of a strong Federal government, controlling and operating in the field of economics. That is as impossible as to ride a pair of horses going in opposite directions. One idea is that the individuals can handle their own affairs better than the state, and the other is that only an all-powerful state can handle the economic life of all the people. Those ideas won't mix."*

—JOHN M. HANCOCK,
Economist.

The March of Events

President Truman Hedging on MVA?

THE effect of hard knocks in Congress on the proposed Missouri Valley Authority was seen in a statement sent by President Truman to the opening meeting last month of the National Reclamation Association in Denver, Colorado. Heretofore Truman has carried on the support of MVA inherited from his predecessor administration. But the surprise message, addressed to Ora Bundy, president of the association, showed signs that Truman is wilting under the continued anti-MVA barrage in Congress. Truman said in part:

"In a recent address at Gilbertsville, Kentucky, I pointed out that the underlying common-sense principles of the Tennessee valley experiment could provide guidance and counsel to the people in other regions, who likewise aspire to put their resources to the greatest use; but I emphasized that the form such development will take in any region was for the people of that region to decide. . . . The key to success of any regional resource development will be found in how active coöperation is organized between the people of the region, their civic and commercial organizations, and local and Federal governments. TVA has demonstrated successfully one way in which this can be done. Another experiment in which four Federal agencies are participating—the War Department, Department of the Interior, Department of Agriculture, and the Federal Power Commission—is now making another demonstration. The manner in which these agencies work together, and at the same time work with local political units and private organizations, will be watched closely."

The conclusion drawn from the Truman statement by those attending the Denver meeting—chiefs of the Bureau of Reclamation and principal association delegates—was that the authority legislation is bound to be scuttled. Alban J. Parker, attorney general of Vermont and chairman of the Water Conservation Conference Continuing Committee (serving 29 states), said: "The statement is the President's affirmation of the policy established by Congress in the present Flood Control and Rivers and Harbors acts."

Speakers at the Denver meeting, who vigorously attacked the authority idea, included Lachlan MacLeay, president of the Mississippi Valley Association; David J. Guy, head of the U. S. Chamber of Commerce Natural Resources Department; and Ellwood J. Turner of Media, Pennsylvania, chairman of the Water Resources Committee of the Council of State Governments.

Fight for Pipe-line Control

CONFLICT over the proposed sale of the Big Inch and Little Inch oil pipe lines broke out on November 17th as opposing interests argued before a committee investigating petroleum resources at Washington, D. C.

Extending from east Texas oil fields to the New York area, the lines were built by the government at a total cost of $138,000,000 when German submarines were taking a heavy toll of tankers.

Representatives of Texas oil and gas producers and a New Yorker disclosed plans to buy the pipe lines for use in moving natural gas rather than oil. Speakers for the coal industry and railroads contended such plans would adversely affect as many as 2,500,000 miners and railroad workers and members of their families. Gas would displace present demands for coal and railroads would have less tonnage to carry, they argued.

D. Heywood Hardy, an attorney, stated that a group in Texas, headed by Harold Byrd, was ready to spend $20,000,000 immediately for establishing booster stations to move gas from Texas fields to the New York and Philadelphia areas. The Texans were reported to have $100,000,000 to put up for the purchase.

Claude Williams, as a representative of Rogers Lacy of Longview, Texas, stated that Mr. Lacy, either as an individual or in coöperation with other Texas oil and gas producers, was interested in purchasing the pipe lines to transport gas. He declared the intention of Mr. Lacy and his associates was to operate the pipe line as a public carrier and that they would make it available to independent and major producers alike. He disclaimed any intention of entering the gas distribution business in the East, asserting that would be left to existing companies.

Charles H. Smith of New York, a consulting gas engineer, told the committee he was authorized to speak for a group of New York men who were interested in purchasing the pipe lines to transport gas to that section of the country. He identified his associates as Dr. James Bonbright, member of the New York State Power Authority; C. Ross Holmes, for-

mer gas expert of the New York Public Service Commission; Dr. John Bauer, utility economist; Paul Moses, engineering consultant for the city of New York; and Oscar S. Cox, a Washington attorney.

Welly Hopkins, speaking for the United Mine Workers, declared that the Big Inch and Little Inch should be filled with oil and shut off so they could be ready for prompt government use as oil carriers in event of an emergency. He declared it was unwise economy to transport more fuel to an area where coal was abundant.

J. M. Souby, general counsel for the Association of American Railroads, cautioned the committee to look into effects the utilization of the pipe lines for gas would have on rail carriers.

Natural Gas Rates Reduced

THE Federal Power Commission recently announced it had accepted new rate schedules filed on October 22, 1945, by Panhandle Eastern Pipe Line Company, Chicago, Illinois, which reduce its interstate wholesale natural gas rates by $5,110,000 in comparison with its gross operating revenues for the test year of 1941. Owing to increased volume of sales since 1941, it was estimated that this would effect a reduction of about $9,500,000 from 1944 billings, or about 32 per cent.

The new rates were filed in compliance with the commission's order and opinion of September 23, 1942, directing Panhandle to reduce its wholesale gas rates by not less than $5,094,384 compared with 1941 revenues, which order was upheld by the United States Supreme Court on April 2, 1945.

As the September, 1942, order directed Panhandle to make the reduced rates effective on all bills rendered on and after November 1, 1942, the company will be required to refund to its customers more than $24,000,000, representing the difference between the reduced rates and those the company has continued to charge up to this time. Up to October 1, 1945, Panhandle and its subsidiaries had deposited with the custodian for the U. S. Circuit Court of Appeals for the Eighth Circuit $23,647,413 to be refunded to its customers in Indiana, Illinois, Kansas, Michigan, Missouri, Ohio, and Texas if the commission's order was upheld by the courts.

Reorganization Bill Passed

THE Senate, with a voice vote, on November 19th passed its bill to give the President broad powers that he asked six months ago to reorganize and condense the war-swollen Federal government. The measure was sent to conference with the House, which adopted similar legislation on October 4th.

Neither bill is just what the Chief Executive sought, although the actions of both houses would give him a freer hand than was recommended by the Senate's Judiciary Committee, which proposed that any presidential program could be vetoed by a majority vote of either house. Under both Senate and House bills, a reorganization plan would become effective automatically in sixty days, unless both houses meanwhile invoked their veto right by concurrent resolution.

This much of the plan seemed certain to survive the conference, but the form much of the legislation would take ultimately remained in doubt.

Both Senate and House insisted upon making exemptions in the cases of various quasi judicial agencies and other establishments, and between them they put seventeen on their "touch not" lists.

The Senate on November 15th overrode its Judiciary Committee to vote President Truman a freer hand in reorganizing and streamlining the war-swollen Federal establishment.

Senator Tydings, Democrat of Maryland, had accused members who long had assailed bureaucracy, inefficiency, and waste of "scuttling like a lot of rats" when oportunity came to make corrections.

Giving the President a victory after a succession of legislative setbacks, the Senate voted 35 to 24, almost wholly along party lines, to follow the House-approved plan, under which the President's reorganization programs would become effective automatically in sixty days unless vetoed meanwhile by both houses of Congress. This substitute for the Judiciary Committee recommendation that veto power be given to either house was sponsored by Senator Byrd of Virginia, chairman of the joint committee for reduction of nonessential Federal expenditures.

Before taking this vote the Senate rejected, 37 to 26, a Republican-sponsored substitute under which the President's programs would have to receive congressional approval, in whole or in part, by concurrent resolution before they would go into effect.

Specifically, the bills in conference would exempt from presidential reorganization, in whole or in part, the following: Interstate Commerce Commission, Federal Communications Commission, Federal Trade Commission, Securities and Exchange Commission, United States Tariff Commission, Federal Power Commission, Federal Deposit Insurance Corporation, Federal Land Bank System, National Mediation Board, National Railroad Readjustment Board, Railroad Retirement Board, Civil Service Commission, Veterans Administration, United States Maritime Commission, the municipal government of the District of Columbia, and General Accounting Office.

Supreme Court Hears Case

THE fate of public utility holding firms under the "death sentence" clause of the 1935 Public Utility Holding Company Act was taken under consideration on November 15th

by the United States Supreme Court.

The tribunal began consideration of the issue after hearing arguments on an appeal by the North American Company from an order by the Securities and Exchange Commission. The firm was told by the SEC to divest itself of all but one of its utility systems.

Charles E. Hughes, Jr., company attorney and son of the retired Chief Justice, argued that the ownership by one corporation of securities of other corporations in itself is not interstate or intrastate commerce.

"The right to own or retain the ownership of property is characteristically a matter governed by the laws of the states, with which the Federal government has no concern," he asserted.

Solicitor General J. Howard McGrath, recently appointed by President Truman, made his first argument before the high tribunal in replying to Hughes.

"The North American system," McGrath said, "consists of 80 different companies stretched across the United States, some of them holding companies themselves. The companies operate in 17 states and serve 3,000,000 customers."

"How can North American say it is not engaged in interstate commerce, when every physical act company officials perform is done outside of New York?" McGrath asked.

"Their securities are sold all over the United States," the solicitor general added, "they are engaged in the sale of a product across state lines, no different from the sale of any other commodity in interstate commerce."

Only six justices heard the case, Justices Douglas, Jackson, and Reed having disqualified themselves. North American appealed to the high court almost three years ago, but consideration has been delayed because of lack of a legal quorum of six judges.

SEC Issues Tax Accounting Critique

AFTER giving "extensive consideration" to the views of professional organizations, accountants, registrants, and others, the Securities and Exchange Commission on November 14th handed down a 34-page opinion giving its conclusions regarding so-called "charges in lieu of income taxes" and "provisions for income taxes" in profit and loss statements.

In its conclusions, the commission asserted that "the proper function of income statements presenting the results of operations is to present an accurate historical record. On this basis, it is evident that the items included therein should clearly and accurately reflect only actual operations."

"It is accordingly our view," the opinion continued, "that the amounts shown should be in accordance with the historical facts and should not be altered to reflect amounts that the draftsman considers to be 'normal,' or likely to recur in future years."

Referring to the treatment of "tax savings," which it said are really "tax reductions," intended to reflect the actual results of past operations, the commission declared that they result because certain costs or expenses which are deducted in computing the amount of income taxes actually payable are not also treated as charges against income in the current income account.

Stating its conclusions on the treatment of income taxes in "adjusted" and "*pro forma*" statements designed to give effect to certain proposed transactions, the commission said:

"In our opinion financial accounting is essentially historical in nature—it consists of an accounting for costs that have actually been incurred by the business and for the revenues that have been actually derived from the business . . . financial accounting is in our opinion concerned with what did happen, not with what might have happened had conditions been different, and it does not attempt to forecast the future even though it supplies much of the material used in making such a forecast."

FEPC Will Close Offices

THE Fair Employment Practices Committee on November 14th announced that shortage of funds would force the closing of seven field offices on December 15th.

Chairman Malcolm Ross said FEPC offices in New York, Philadelphia, Atlanta, San Francisco, San Antonio, Los Angeles, and Washington would close. Those in Detroit, Chicago, and St. Louis will continue operating.

Stock Reductions Proposed

THE United Corporation, Wilmington, Delaware, on November 15th filed with the Securities and Exchange Commission an application for authority to reduce its authorized no par value common stock from 24,000,000 to 18,261,551 shares of $1 par value, and to reduce its authorized preference stock from 5,000,000 to 1,214,700 shares of $5 par value.

United advised the commission that it desired to consummate the proposed transaction because the "change to par value stock would substantially reduce the amount of the declarant's liability to the state of New York for any additional license fee in the event that declarant opens an office in that state." At present, the corporation stated, its management believes it will be advantageous for United to open an office in New York city as soon as possible.

Likewise, the applicant stated, the change to a par value stock would reduce the amount of the Federal stamp tax payable by a stockholder on a sale of transfer of stock, and the proposed reduction in the number of authorized shares of stock and the proposed change to par value stock would "enable the declarant

to effect a substantial reduction in the amount of the annual franchise tax assessed by the state of Delaware."

If the SEC approves the program, the number of common shares will be the same as the number now outstanding plus the number held subject to outstanding option warrants, and the number of preference shares will be the same as the number of shares of $3 cumulative preference stock now outstanding. On the other hand, United said, the program would not change the voting rights of holders of its securities.

ATA Executive Manager Named

GUY C. HECKER has been named executive manager of the American Transit Association and Arthur W. Baker has been appointed general secretary, it was announced last month after a meeting of directors. A member of the staff for the last sixteen years, Mr. Hecker succeeds to the position left vacant by the late Charles Gordon.

Mr. Baker joined the association in 1925.

Regional Groups Urge Larger Federal Loan Bill

A REGIONAL meeting of the National Rural Electric Coöperative Association held in Chicago on November 7th urged passage of a bill now before Congress that would make $585,000,000 available for rural electrification projects and protested against removal of the Rural Electrification Administration from St. Louis to Washington, D. C.

A resolution adopted by association delegates from Illinois, Iowa ,and Wisconsin, and sent to Congressmen of the three states, sought approval of the bill, introduced by Representative Poage, Democrat of Texas, and recommended that the measure be amended to provide "at least $250,000,000 a year for three years in the form of loans from the RFC to the Rural Electrification Administration."

E. J. Stoneman of Platteville, Wisconsin, national president of the association, described as a "complete misrepresentation of facts," the contention of power interests opposing the measures that the unexpended $300,000,000 now in the hands of coöperatives "would finish the country's rural electrification job."

The resolution protesting movement of the REA to Washington said 70 per cent of the country's coöperatives were within 450 miles of St. Louis where it was "wisely" moved in 1942. The resolution said the move would "retard" the rural electrification program and would result in greater expense due to increased travel.

Delegates from four states, meeting at Nashville, Tennessee, on November 12th, also urged immediate passage of an enlarged Federal loan program for REA. The group, composed of representatives from 14 coöperatives in Mississippi, 11 in Kentucky, 6 in Alabama, and 3 in Tennessee, asked House passage of the Poage Bill. It asked, however, that the bill be enlarged to provide $100,000,000 between next January 1st and July 1st, and $250,000,000 a year for the next three fiscal years following.

Clyde Ellis, executive manager for the NRECA, said that without the additional aid coöperatives in 21 states, including Kentucky, Alabama, and Tennessee, would be without expansion funds after January 1st.

Ellis charged that "power companies," which he said have been organized into an association with headquarters at Washington, "have just finished one of the most unfortunate and damning lines of testimony" in opposition to the bill before the House Interstate and Foreign Commerce Committee.

"This is the first time the power companies have organized and presented a solid front against the REA program," he said. "They're coming in there to ask Congress that it not do for the farmer what they themselves have refused to do for fifty years."

Art Gerth, St. Louis, chief of the REA applications and loans division, also urged passage of the measure, declaring that only 30 per cent of the third district's rural area is electrified and that in some states REA can fill only one-third of the requests for expansion loans.

Gerth said "a most critical item" in expansion plans is a shortage of poles, 3,000,000 of which will be needed each year for three or four years. That is more than 1,000,000 poles beyond peak prewar production, he said.

Britain to Nationalize Utilities

BRITISH political writers recently reported a Labor government decision to nationalize the transport, gas, electric, iron, steel, and engineering industries and to limit public investment in the luxury trades.

At the same time, the *Daily Sketch* warned editorially that as a result of the socialist doctrine of nationalization workers seem certain to lose their liberties altogether. Others foresaw complete state control by the government.

The pending bill to control investments which would refuse licenses to firms not considered helpful to Britain's general trade picture apparently was designed to favor the heavier but less profitable industries, it was said.

French Ask Nationalization

THE dominant left-wing bloc in France's Constitutent Assembly on November 6th demanded sweeping nationalization of the nation's key enterprises as the newly elected body took over the reins of government from General de Gaulle.

The demands were part of a broad program circulated at the initial session of the assembly

by the Communist and Socialist parties, which control a majority of the delegates.

The program called for labor sharing in industrial management, government-controlled foreign trade, progressive emancipation for natives of France's empire, an uncensored press controlling its own news agency, and closer collaboration among the major Allied powers.

Enterprises which would be nationalized include the Bank of France and the larger credit institutions, such as deposit and insurance banks and insurance companies; gas and electric utilities; the merchant marine, coal mines, and steel; the manufacture of lighter metals, liquid air, cement, explosives, sodium, and most fertilizers; and the importation and transportation of liquid fuels.

The proposed steps would go beyond the nationalization program of Great Britain.

California

Chamber Hits "TVA" Plan

THE board of directors of the California State Chamber of Commerce recently went on record as vigorously opposing any Federal legislation seeking to create a Federal authority, similar to the Tennessee Valley Authority, in California.

Carl F. Wente, chairman of the chamber's statewide water resources committee, asserted that the "issues raised by the several measures pending in Congress resolve into this question:

"Shall the Constitution of the United States and the form of government established and maintained under it prevail, or shall the Constitution become a subterfuge for centralization of power in the Federal government to effectuate a planned economy?"

The chamber said it was seeking early completion of the Central Valley project and return of its control and management to the state of California.

Opposition to creation of a Federal authority to supersede the state in administration and control of the water resources of California's valleys is based on grounds that vested water rights would be subject to condemnation, that Federal authorities "are a dangerous welding of economic control and political power which threaten interference in social and cultural activities; that no proposed Federal authority is answerable to Congress for expenditure of its revenue."

The chamber said that various bills pending in Congress seek creation of Federal regional authorities. One, the chamber said, would blanket the 48 sovereign states within 9 conservation authorities.

"No one is as much interested in the Central valley's prosperity and standard of living as are the people and government of California," the chamber declared.

"Why surrender these to the Federal government?"

The chamber said it believes "California is being pushed rapidly into the orbit of TVA social planning, with loss of state's rights and rights of private enterprise."

Georgia

Air-conditioned Trolleys

SUCCESSFUL operation of the first air-conditioned trackless trolley in Atlanta over a 3-month period has resulted in the Georgia Power Company placing orders for 30 more electric trolley coaches equipped with air conditioning and 70 more such vehicles which may be easily converted on short notice.

Last summer the transit company installed air conditioning on one of its trolley coaches on an experimental basis—the first air-conditioned vehicle ever used in urban transportation service. Air conditioning had been used extensively in railroad passenger cars and to a limited extent in intercity busses, but never before in city transportation service. A survey conducted by the company in the form of a questionnaire distributed among passengers following the installation of equipment last summer showed the innovation to be extremely popular.

Of the more than 45,000 questionnaires distributed among riders, 9,531 were returned. Of this number, 96 per cent of the riders found that air conditioning improved comfort.

Kentucky

Show-cause Order Issued

NOW that Congress has repealed the excess profits tax, the state public service commission on November 14th ordered the Louisville Gas & Electric Company and 15 other privately owned utilities operating in Kentucky to show cause by December 4th why their rates

should not be reduced to correspond with excess profits taxes paid in 1944.

The commission at the time had under submission a suit by Mayor Wilson W. Wyatt of Louisville to compel LG&E to reduce rates commensurate with $2,927,096 excess profits taxes alleged to have been paid the Federal government in 1944.

Asked what effect, if any, the commission's recent order would have on the LG&E Case, Chairman Thomas B. McGregor replied: "Well, the main point in the show-cause order is the main point in the case under submission."

Two other Louisville utilities affected by the show-cause order are Louisville Railway Company and Southern Bell Telephone & Telegraph Company.

McGregor said that between $4,500,000 and $5,000,000 in 1944 excess profits taxes can be identified in annual reports to the commission as having been paid to the Federal Treasury in 1944. The actual total is substantially larger, he said, because some of the utilities operating in Kentucky combine their reports with out-of-state units of the same system.

The other 13 utilities covered by the order are: Kentucky Utilities Company, Lexington; Kentucky & West Virginia Power Company, Ashland; Union Light, Heat & Power Company, Covington; Community Public Service Company, Winchester; Lexington Water Company, Lexington; Central Kentucky Natural Gas Company, Lexington; Frankfort Kentucky Natural Gas Company, Frankfort; Owensboro Gas Company, Owensboro; West Kentucky Natural Gas Company, Owensboro; Ashland Home Telephone Company, Ashland; Continental Telephone Company, Cookeville, Tennessee; Lexington Telephone Company, Lexington; Northeastern Telephone Company, Augusta.

Each company, the order stated, shall report on or before December 4th "the amount of excess profit taxes paid, if any, under its last Federal tax report, together with the amount now accrued, if any, on the books of each company for the payment of any excess profit tax, and all amounts, if any, which the company is entitled to receive back in the form of payment or credit on account of any excess profit tax heretofore paid by it."

The order continued: "It is further ordered by the commission that on or before said date each of the above-named utilities shall show cause to the commission why a reduction in their rates, in the form of revised schedules, or rate reductions by the refund method, shall not be filed with the commission by reason of the repeal of the excess profit tax law."

Gas Merger Approved

THE state public service commission on November 13th approved the Owensboro and Western Kentucky Gas companies' consolidation. Officials of the companies hailed the move as "very logical," claiming it would:

1. Reduce the bonded debt of both firms.
2. Result in more economical operation.
3. Eliminate operation in overlapping territory.

The commission permitted Western to acquire all assets of Owensboro, effective November 1st, and to refinance the combined firms at a saving of $61,000.

W. T. Stevenson, who held controlling stock in the two gas companies, testified the consolidated company would issue 27,000 shares of common stock and $850,000 in 4 per cent, 20-year first mortgage bonds on the combined properties.

Under the merger, retail rates will remain the same.

The new firm, to operate as Western Kentucky Gas Company, will serve about 16,000 retail customers in about 35 communities.

Stevenson and Carroll F. Byron, attorney, said that with the issuance of new stock and bonds, the company also will cancel $75,000 in Owensboro preferred stock owned by Western and will issue to Western common stock in an equal amount.

Maryland

Quits PSC Position

THE resignation of Charles T. LeViness, as general counsel of the state public service commission, was confirmed recently by Governor O'Conor, who temporarily withheld comment or any announcement as to a successor.

At the same time, officials of the Pennsylvania Railroad announced the appointment of Mr. LeViness as the company's legal counsel for the city of Baltimore and for Charles and Anne Arundel counties, the appointment to become effective November 16th.

In his letter of resignation, written November 10th, Mr. LeViness said his action was "prompted solely by a desire to devote all of my time to the private practice of law with my firm." He asked that the resignation become effective today "or as soon thereafter as a successor shall have been appointed."

The retiring general counsel, appointed in June, 1944, told Governor O'Conor that he felt he had completed the major part of the work to which he had been assigned with the conclusion of the hearings on the rates of the Consolidated Gas, Electric Light & Power Company a few weeks ago, and that he believed he was leaving the field "fairly clear for my successor."

Michigan

Gas Bills Cut

THE Michigan Consolidated Gas Company, a subsidiary of the American Light & Traction Company, on November 15th announced that a reduction of $3,961,000 annually had been effected in the Detroit area for some 490,000 gas customers. It said the new rate cut average monthly gas bills about 20 per cent and would save the average small domestic consumer more than $7 a year.

In addition to the $3,961,000 annual savings, the company's customers in Detroit will share in distribution of $11,000,000 impounded since 1942. A hearing on methods of distributing this fund was scheduled for the following week.

Announcing approval by the state public service commission, William J. McBrearty, commission chairman, expressed gratification that the reduction was made without litigation.

The state commission, in approving the new rates for the Detroit area, also sanctioned a cut of $55,760 a year for 10,574 customers in the company's Ann Arbor district.

Simultaneously, McBrearty served notice on the pipe-line company that it had no authority to sell natural gas direct to the Ford Motor Company or any other industrial user without approval from the state commission.

Gets Top DSR Job

RICHARD A. SULLIVAN, 35-year-old Detroit utility rate expert, became the new general manager of the Detroit Street Railway last month. The DSR commission announced the appointment at its regular meeting. Sullivan succeeded William S. Bullock, who stepped back to his civil service position of general superintendent of transportation.

Sullivan came to Detroit in May, 1942, when he led a competitive examination for the $6,000-a-year post as the city's public utility rate analyst. His work as the city's rate expert attracted Mayor Jeffries, who approved an increase to $7,500 in his pay as rate analyst and also designated him for an additional $5,000 job as special financial consultant for the DSR. His pay as general manager will be $16,500.

Sullivan is generally credited at the DSR for pushing the inauguration of express bus lines and for the decision to meet increasing payroll costs by a shift to one-man operation of streetcars and a switch to larger busses.

Missouri

MVA Target

OPPOSITION to creation of a Missouri Valley Authority as proposed in the Murray Bill pending in Congress was expressed at Jefferson City on November 10th in resolutions adopted at the annual meeting of the Missouri Farm Bureau Federation.

Development of the Missouri river, and construction of flood-control projects, as detailed in the Pick plan and directed by the Army Engineers, was favored by the organization.

Flood control was recognized by the group as the basic problem and the organization recommended that work of that type take precedence over power development and navigation. The resolution called upon the American Farm Bureau Federation to support appropriations and supplementary legislation necessary to start prompt action on flood-control works.

In its stand, the federation took an opposite view on the river development problem than the position of the Missouri Farmers Association, another major agricultural organization operating in the state. The Missouri Farmers Association has endorsed the principles of the MVA and its officers have been active in promoting sentiment in favor of the Murray Bill.

Natural Gas Cost Cut

A RATE reduction of $450,000 a year for natural gas sold to Laclede Gas Light Company by Mississippi River Fuel Corporation was ordered last month by the Federal Power Commission. This was expected to be passed on to the approximately 160,000 domestic customers of Laclede.

Whether the rate cut would enable Laclede to change from its supply of mixed natural and manufactured gas for general consumption in St. Louis had not been determined.

New York

Transit Project Approved

THE New York city board of estimate approved on November 15th a contract made by the board of transportation with the J. G. White Engineering Corporation for designing and supervising an $8,000,000 modernizing and improving project on the near-obsolete Fifty-ninth street electric power plant of the IRT.

It will require three years to complete the

job, which is the first step in a $100,000,000 program for streamlining and modernization of all power facilities of the IRT and BMT divisions of the city system, with the Fifty-ninth street and Seventy-fourth street plants of the IRT linked by tie-lines with the Williamsburg plant of the BMT.

Under the contract, J. G. White Engineering Corporation will receive fees and other payments not to exceed a total of $390,000.

North Carolina

To Build Plant Addition

THE Duke Power Company will build a $4,500,000 addition to its steam plant at Cliffside, near Shelby, according to Charles I. Burkholder, vice president and chief engineer of the company. Construction will begin next year to have the plant ready for operation by January 1, 1948.

Twelve homes will be built in Cliffside Village to take care of extra workers at the enlarged plant.

Ohio

Gas Sale Report Ordered

FIXING a deadline of December 1st, the Akron city council on November 13th served notice on the East Ohio Gas Company that it expected a written report on natural gas bought from the Panhandle Eastern Pipe Line Company and resold to Akron consumers.

Council acted under § 14 of the city's contract ordinance.

This clause, inserted in the rate ordinance approved October 1, 1942, gives Akron the right to reopen contract negotiations immediately after more Panhandle gas is available in the city. It also provides users shall benefit from lowered wholesale gas costs.

Council was said to be proceeding under the Federal Power Commission's decision granting East Ohio a $2,000,000 refund from Panhandle.

Pennsylvania

GI Taxi Group Blames Opposition

SAMUEL PACKMAN, counsel for the GI Taxicab Association, which is seeking a franchise to operate in Philadelphia, told the state public utility commission recently "our opponent" used "financial influence" to intimidate witnesses to keep them from appearing in behalf of the association.

The association, which proposes to employ 300 ex-servicemen, maintains that the Yellow Cab Company in Philadelphia constitutes a monopoly.

Packman told the commission examiner, "people, while hesitant to testify in our behalf, have told us that they would appear and then a few days later, as if by some miracle, they turned against us."

"The financial influence of our opponent," he said, "has reached out beyond the bounds."

Wisconsin

Power Plan Approved

THE city of Hartford last month won state public service commission approval of its plan to increase electric power facilities of its municipally owned plant.

The commission, which had demanded that Hartford offer adequate service, extended the time the city has to put the increase into effect and authorized the municipality to purchase and install a $30,000 generating unit.

Hartford previously had been ordered to provide additional capacity by November 8th. Under the commission's recent action, it has until January 15, 1946, to get the 1,000-kilowatt unit into use.

The commission decision ended a controversy on steps to be taken by Hartford to obtain extra power. The commission, on October 8th, found the present power plant had failed to give consumers enough service and presented an "imminent danger" to health and property. Complaints had been filed by the Hartford Chamber of Commerce after a power failure in September.

The Hartford city council had proposed tapping the Wisconsin Gas & Electric Company high line for extra electricity.

The Latest Utility Rulings

Commission Divides Territory between Public Utility Companies

THE Arizona commission is of the opinion that it has constitutional and statutory authority to apportion territory between utilities. The commission made this ruling in a case where Arizona Edison Company, Inc., had filed a complaint against the California Electric Power Company, alleging that the latter company was a foreign corporation unlawfully engaged in business in Arizona and that it had extended its lines and system so as to interfere with the system of Arizona Edison. It was further alleged that California Electric had extended its lines in direct competition in violation of decision in *Re* California Electric Power Co. (Ariz 1944) 55 PUR(NS) 247.

Arizona Edison distributes domestic water and gas in addition to its electric utility business. Its main distribution system and lines are in the metropolitan area of Yuma while the main distribution system of California Electric is generally in the agricultural areas to the south and east of Yuma. The Edison Company is hemmed in on the north and west by the California state line.

Under these circumstances the commission deemed it proper to apportion the territory involved between the two utilities. The line of cleavage, it was said, must be definitely and clearly drawn so that further conflict and competition might be avoided and so that each utility might serve, as efficiently and economically as possible, the area within which it is to be responsible for the public comfort and convenience. The commission said:

> We recognize that this may require some rearranging of lines and services but we are of the fixed and firm opinion that the public good will be best served thereby in the long run. And, of course, adequate provision can and must be made for fair compensation for any losses suffered by either company. Unless this is done a definite line cannot be clearly fixed leaving reasonable room for a fair share of the expected growth of the area to Arizona Edison. Any division which does not achieve this result can only hurt Yuma and the area.

In making its determination the commission gave some consideration to the action of the voters of Yuma in rejecting an application of the California Electric Power Company for permission to occupy city streets. It was said that the statutory requirements of certificates of convenience and necessity indicated that such a franchise is a prerequisite to the right of a utility to receive commission sanction to occupy a territory.

The commission realized that technically perhaps Arizona Edison should not be required to pay the value of physical properties of the other company and of its services within the city, since the company must remove most of such properties and services because it has no franchise. The commission believed, however, that the public good would be best served by making certain that there would be no waste in the abandoning of these services and that the California Electric Power Company be allowed and paid fair compensation for such services as it had developed in the area. It might, if it so elects, remove its properties, for the commission would not require that it sell the properties contrary to its desire.

The commission further held that there had been a violation of the law by reason of service rendered by California Electric to an industry in the city. A utility and a user of service may not evade the law through the device of the construction of a line by the user to the system

of the competing utility. If this could be done, the commission said, the entire structure of utility regulation could be circumvented and broken down. *Re Arizona Edison Co., Inc. (Docket No. 9751-E-993, Decision No. 15860).*

Telephone Service Denial Not Justified by Suspicion of Illegal Use

THE Missouri commission, although holding that it had jurisdiction to authorize a telephone company to discontinue service used for an unlawful purpose, refused to permit such discontinuance in the absence of substantial evidence that a subscriber was knowingly using service for an unlawful purpose. The evidence offered by the telephone company created "a strong suspicion of bookmaking." However, said the commission, its suspicions did not constitute that substantial evidence upon which its finding must be based.

The commission, in order to say that the service was being used for the purpose of receiving or placing bets upon horse races, would have to pile an inference on an inference and draw the conclusion that service was being used for an unlawful purpose by inferring such fact from its inference that a certain person was a bookmaker. As to the complaining subscriber, Pioneer News Service, Inc., in order to find its use of service unlawful, the commission would not only have to infer that such person or other customers of the complainant were making books on horse races, but it would have to infer again from that inference that the complainant had knowledge of such betting and was knowingly using its telephone lines in the furtherance of that unlawful occupation.

It is Hornbook Law, said the commission, that a fact-finding body cannot arrive at a conclusion of fact by basing one inference upon another inference. The commission continued with the following statement:

> We have searched the law books to find some precedent by which we could determine whether or not the mere furnishing or receiving of information concerning horse racing or other sports, which is all the evidence before us shows complainant is doing, could be considered gambling and a violation of the criminal laws.
>
> We have searched the Missouri statutes and find no law prohibiting horse racing, neither do we find any law saying that the dissemination of racing information is unlawful.

Commissioner Wilson, in a dissenting opinion, declared that the commission is without jurisdiction to determine whether a crime has been committed. In view of the circumstances shown in evidence, there appeared to be some ground for the telephone company's apprehension that it might subject itself to criminal liability and prosecution. In view of the testimony and the fact that the public policy of the state is against gambling, the dissenting commissioner did not think the commission, a department of the state government, should order the telephone company to continue service to the complainant, nor could the commission make a finding that the complainant was violating the criminal law. It was said that the complaint should be dismissed and the parties should try the issue in court. *Pioneer News Service, Inc. v. Southwestern Bell Telephone Co. (Case No. 10,652).*

Court Upholds Dismissal of Application for License without State Permit

THE order of the Federal Power Commission, in *Re* First Iowa Hydro-Electric Co-op (1944) 52 PUR (NS) 82, dismissing an application for

authority to construct and operate a power development in Iowa has been affirmed by the United States Court of Appeals for the District of Columbia. The commission had dismissed the application because the applicant failed to make the showing required by § 9(b) of the Federal Power Act that it had complied with state laws.

The applicant contended in the alternative (1) that no applicable Iowa law required one in its position to secure a permit, and (2) that if the Iowa law meant what its officials contended, then the law was unconstitutional and compliance could not be required.

In support of its first proposition the applicant said that the Iowa Code sections relied upon by the commission were not state laws contemplated by § 9(b) because by their very terms the authority of the state executive council was limited to waters of the state, and because they did not prohibit diversion of water for power purposes, but only for industrial purposes. Conceivably, said the court, Iowa might say that its legislature intended to speak only of waters navigable according to state classification, although not navigable under Federal classification. The court continued:

> While this is a possible interpretation and one which the state might adopt concerning the streams here involved—especially if it were necessary to do so in order to avoid the challenge of unconstitutionality—we are unable to adopt it, in the absence of a decision to that effect by the Iowa courts.

The court, after rejecting the first contention, made the further ruling that the statute was constitutional. The jurisdiction of the Federal government over navigable streams, in so far as the licensing of power projects is concerned, is not, according to the court, exclusive in nature and requiring a uniform rule of regulation excluding state regulatory legislation. A state may legislate concerning local matters which Congress could have covered but did not in regulating related matters, and where the Federal law authorizes such action the action is permissible even as to matters which could otherwise be regulated only by uniform national enactments.

Congress, in enacting the Federal Power Act, did not intend that the Federal government should occupy the field completely or that the state should be excluded. On the contrary, said the court, the act contemplates a dual system of control and the exercise of appropriate powers by both governments. This was said to be the plain purpose of § 9 of the act, which requires submission to the Federal Power Commission of satisfactory evidence that an applicant for a license has complied with state laws.

An applicant for a license under such circumstances, the court continued, is in no position to challenge an order of the Federal Power Commission denying the license for failure to meet state requirements until it has first applied for a state permit and pursued such remedies as may be available in the state to establish its right to issuance of the permit.

Aside from any other reasons for upholding the commission order, it was noted that the applicant had failed to apply for a permit required under a state statute relating to the flooding of highways.

This alone, it was said, would be a sufficient ground for denying the application. *First Iowa Hydro-Electric Co-op. v. Federal Power Commission*, 151 F(2d) 20.

Provision for Stockholder Approval Eliminated From Recapitalization Plan

THE Securities and Exchange Commission has modified its order approving the recapitalization of Commonwealth & Southern Corporation by eliminating the provision for a vote of stockholders. The commission, in *Re* Commonwealth & Southern Corp. (1945) 59 PUR(NS) 65, had exercised its discretion in approving this provision, although it was observed that such a vote is not re-

quired under the Holding Company Act. At that time it was also stipulated that the decision to approve the provision should not mean that the commission might not later proceed, if necessary, to enforce the plan without stockholder approval. Subsequent delays prompted this action.

Representatives of various security holders and representatives of the company had been unable to reach an agreement on any important factor involved in holding the meeting and voting. Exceptions had been filed with the commission raising issues concerning such matters as the form and solicitation of proxies, the accuracy and fairness of statements contained in solicitation material, the existence and composition of a proxy committee to tabulate and vote the proxies. Counsel for common stockholders opposing the plan had challenged the propriety of any voting on the plan prior to determination of proceedings which they had instituted in the circuit court of appeals seeking review of the commission order approving the plan. The court proceedings had been dismissed on the ground that review prior to the conclusion of enforcement proceedings in the district court was premature. Lownsbury *v.* Securities and Exchange Commission (1945) 60 PUR (NS) 246.

Although the commission noted the specific conflicts existing in the case, it said that its purpose in doing so was to relate them to the standard of the act calling for expeditious compliance. The delay, and not the cross-currents of dispute that had appeared, was said to be significant. *Re Commonwealth & Southern Corp. (Delaware) (File Nos. 59-20, 59-8, 54-75, Release No. 6177).*

Denial of Temporary Rate Increase Proper Basis for Equity Jurisdiction

THE supreme court of Illinois reversed and remanded a decree dismissing, for want of equity, an action to enjoin enforcement of an order denying a temporary rate increase. The lower court had ruled that the denial did not constitute such a final order as to be a proper basis for equity jurisdiction. The supreme court held that this ruling was erroneous.

This case involved an attack on two commission orders as being confiscatory and violative of the utility company's constitutional rights. One order denied a temporary increase of both intracompany and intercompany rates, and the other denied a permanent increase of the intracompany rates. The defendants contended that the plaintiffs failed to exhaust their administrative remedies before the commission as to the intercompany fares and that, therefore, equity should not take jurisdiction even in a confiscation case. The court ruled against this contention.

This rebuttal was further buttressed by a holding that where procedure to be followed under the Public Utility Act in rate cases does not furnish a utility adequate means to prevent rate actions of the commission from violating the utility's constitutional rights, a court of equity will take jurisdiction to prevent the utility's suffering irreparable injury in an action which is tried *de novo* and independently of proceedings pending before the commission.

It was also ruled that where a commission rate order is contended to be confiscatory, the evidence which was placed before the commission in the rate proceeding need not be introduced in the equity suit.

In reply to a contention that the termination of the company's franchise left it without standing in the injunction action, the court said:

> The proceedings before the commission in this suit are on the assumption that the property held by the trustees is going to continue to render service as a utility, and that the city will continue to permit the use of parts of its streets. The orders of the commission

are on the basis that the utility will continue to furnish transportation to the public. Under such circumstances, the property of the utility must be considered as devoted to a public utility and during the continuance of such use the trustees have the right to be compensated for the services it renders. We perceive no reason why the trustees operating a public utility under the circumstances shown would not be entitled to invoke the constitutional requirements of due process.

Even so, the defendants further contended that such expiration would render the transit company's property located in the streets valueless, except for scrap, for rate-making purposes. The court also ruled against this contention.

In considering the case on its merits, it was found that for the year 1941 the company operated at a loss and that the upward trend for increased revenues for 1942 and the first six months of 1943 was offset by the upward trend of wages, commodities, and supplies. These conclusions were drawn without making an allowance for depreciation. Therefore, the court held, the company was entitled to a temporary rate increase sufficient to meet operating expenses.

In conclusion, the court found that in so far as a permanent rate increase was concerned the company had not presented a case upon which a rate base for return on investment might be determined. *Sprague et al v. Biggs et al. 62 NE(2d) 420.*

Other Important Rulings

THE Securities and Exchange Commission permitted a new subsidiary of a holding company (which was under order of dissolution) to acquire the common stock of affiliated operating companies from the parent, as tending towards the economical and efficient development of an integrated system under § 10(c)(2) of the Holding Company Act, where the properties to be acquired were interconnected, operating economies in coördinated operation had been large, and acquisition would permit increased long-range planning and a higher degree of coördination in operations. *Re American Power & Light Co. et al. (File Nos. 59-12, 70-1134, 70-1135, Release No. 6158).*

The supreme court of Oklahoma held that class C motor carriers are required neither to procure a certificate to operate, nor to file a public liability bond as required of class A and B carriers. *Beverly et al. v. Elam, 162 P(2d) 180.*

The supreme court of South Dakota held that the commission acted reasonably in authorizing the construction of a spur track and the condemnation of a right of way therefor where the track would facilitate switching operations and eliminate switching congestion, furnish additional storage space for railroad cars, make it possible for the city involved to construct a street which would eliminate traffic crossing of the railroad tracks, and aid in the transportation of freight for many firms and individuals. *Illinois Central Railroad Co. v. Wisconsin Granite Co. 19 NW(2d) 753.*

The court of civil appeals of Texas held that an interstate motor carrier may not conduct intrastate operations without first obtaining a certificate from the state commission, and it cannot be required to operate illegally by mandatory injunction. *All American Bus Lines, Inc. et al. v. Hawkins, 188 SW (2d) 992.*

The Wisconsin commission, in denying authority to discontinue agency service at a railroad station, stated that the distance between agency stations, although a factor which may be considered, is not necessarily controlling. *Re Chicago & North Western Railway Co. (2-R-1652).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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TITLES

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MARYLAND PUBLIC SERVICE COMMISSION

Re Pan-Maryland Airways, Incorporated

Case No. 4710

Re Columbia Airlines, Incorporated

Case No. 4717

Re Red Star Motor Coaches, Incorporated

Case No. 4719
Order No. 41449
October 5, 1945

APPLICATIONS *for authority to operate intrastate aircraft service; applications granted.*

Air carriers, § 1 — State policy.

1. The policy of the state is to promote the rapid development of air service in the state and make it available as soon as possible to all communities which desire it, p. 259.

Certificates of convenience and necessity, § 101.2 — Permit for aircraft service — Single-engine aircraft.

2. The use of single-engine aircraft in daylight contact flying is justified and necessary in order that many small communities may have air service, where such communities would be unable to have better than Class 1 airfields which would safely accommodate only the light single-engine aircraft, p. 259.

Certificates of convenience and necessity, § 90 — Choice between applicants — Coördinated bus and air carrier service.

3. A motor carrier company applying with others for authority to operate an air carrier service within the state was deemed to be in a particularly favorable position to render service between certain points where it was prepared to coördinate bus and aircraft operations to give maximum service to the public, p. 259.

APPEARANCES: George W. Constable, for Pan-Maryland Airways, Inc.; J. Richard Wilkins and Joseph H. A. Rogan, for Columbia Airlines, Inc.; Miles, Walsh, O'Brien & Morris, for Red Star Motor Coaches, Inc.; Hall Hammond, for White Air Lines, Incorporated; Francis J. Carey and

Harry N. Frank, for Blue Ridge Lines, Inc.; Thomas J. Tingley, for Tidewater Express Lines, Inc., and Charlton Bros. Transportation Company, Inc.; Richard W. Case, for The Baltimore and Annapolis Railroad Company.

By the COMMISSION: Pan-Maryland Airways, Inc., a newly organized Maryland corporation, which had not operated any service by aircraft, applied to this Commission on July 6, 1945, for an order permitting and approving the exercise of the franchises granted to it by its certificate of incorporation and announced its intention to operate a public transportation service by aircraft between Baltimore, Annapolis, Easton, Salisbury, Cambridge, Crisfield, Ocean City, Chestertown, Westminster, Frederick, Hagerstown, Cumberland, College Park, Havre de Grace, Bel Air, and Elkton, and later added Centreville and Brandywine.

The application was set for public hearing on July 24, 1945, and at the hearing it was shown that application had been received on July 23rd from Columbia Airlines, Inc., incorporated under the laws of Maryland on July 6, 1945, for authority to operate between Baltimore, Cumberland, Hagerstown, Ocean City, Salisbury, and Cambridge, which application was docketed as Case No. 4717, and that on the morning of the hearing applications had been filed by White Air Lines, Inc., and by Red Star Motor Coaches, Inc., both Maryland corporations.

The application of White Air Lines, Inc., incorporated, on June 30, 1945, which application was docketed as Case No. 4718, proposed service between Baltimore, Annapolis, Leonardtown, Chestertown, Centreville, Denton, Westminster, Frederick, Hagerstown, Cumberland, Salisbury, Elkton, Ocean City, Easton, Cambridge, and Crisfield. The application of Red Star Motor Coaches, Inc., docketed as Case No. 4719, proposed service between Baltimore and Ocean City, via Salisbury.

After some testimony had been offered by Pan-Maryland Airways, Inc., it was agreed by all parties that the several cases should be consolidated for hearing and the matter was set for further hearing on August 20, 1945.

On August 10th, Blue Ridge Lines, Inc., a Delaware corporation whose affiliate, The Blue Ridge Transportation Company, a Maryland corporation, now furnishes and for some years has furnished motorbus service between Baltimore and most of the cities and towns in western Maryland, filed notice of an application which it had made to the Civil Aeronautics Board which includes service to Baltimore, Frederick, Hagerstown, Cumberland, Frostburg, Westminster, and Emmitsburg, and asked that the Commission grant it such rights that might be required to enable it to render intrastate service within the state of Maryland. Counsel stated at the hearing on August 20th, however, that the company was not prepared to present its case then. Therefore, no action will be taken on this application at this time. White Air Lines, Inc., also advised the Commission that it did not wish to pursue its application at this time. None of the applicants has operated scheduled air service.

Three days were occupied in the hearing beginning on August 20th

and the record shows much conflicting testimony as to the suitability of certain types of aircraft for the proposed service and the availability of suitable landing fields. At the conclusion of testimony on the third day the hearing was adjourned to permit the preparation of additional evidence and was resumed and concluded on September 25th.

At that time there was submitted by Red Star Motor Coaches, Inc., a report by the engineering firm of J. E. Greiner Company of a survey of the airport facilities at fifteen of the cities and towns proposed to be served by one or more of the applicants and an examination of the potential facilities where none have yet been developed or where present facilities are inadequate. This report supplied valuable information which disposed of much of the dispute in the record as to existing facilities and the time required for construction of additional facilities and the probable cost.

[1] The Commission, in considering the several applications, has been mindful that the policy of the state as announced by Governor O'Conor and as reflected in recent legislation is to promote the rapid development of air service in Maryland and make it available as soon as possible to all communities which desire it. We, therefore, have endeavored to get all essential information bearing upon the service in general before acting upon any individual application.

[2] While being inclined to put more confidence in an aircraft equipped with two engines than in a single-engine aircraft, we find that the record indicates a high degree of dependability in such engines and since it is quite apparent that many of the smaller communities will be unable to have better than Class 1 airfields which we believe will safely accommodate only the light single-engine aircraft, the use of such aircraft in daylight, contact flying seems to be justified and to be necessary if many of the small communities are to have air service.

The only airfields now existing in Maryland which have paved runways and are suitable for accommodation of the heavier aircraft, other than the Baltimore Municipal Airport, are at Salisbury, Easton, and Hagerstown and the Hagerstown field is the only one of the three which now is licensed by the State Aviation Commission and immediately available for use in the proposed service. The municipal airport at Cumberland is located outside of Maryland, on West Virginia soil, and its availability for use in Maryland intrastate service has not been determined. The number of such operations which can be started at this time is therefore very limited.

While no showing was made at the public hearing of any immediate public demand for air service and the Commission has no means of estimating at this time the volume of traffic to be served, it seems reasonable to expect that the establishment of such a service will stimulate interest therein and that the more convenient and attractive the service is made the more rapid will be its development.

[3] The Commission has thoughtfully considered the several applications and finds that Red Star Motor Coaches, Inc., is in a particularly favorable position to render service between Baltimore, Easton, Salisbury,

and Ocean City. That carrier now operates motorbus service between Baltimore and the principal towns on the Eastern Shore and is prepared to coördinate bus and aircraft operations to give maximum service to the public. The coördination of bus and aircraft operations will provide complete service during the development period when, for lack of adequate landing fields, it will not be possible to reach many of the towns by aircraft. The combining of surface and air operations will produce a flexibility which will permit the use of each to whatever extent is currently required and to the best advantage of the public.

Columbia Airlines, Inc., will be authorized to operate between Baltimore, Hagerstown, and Cumberland.

Pan-Maryland Airways, Inc., will be authorized to operate light, single-engine aircraft in daylight operation, as proposed, between Baltimore, Annapolis, Easton, Cambridge, Crisfield, Chestertown, Westminster, Frederick, College Park, Havre de Grace, Bel Air, Elkton, Centreville, and Brandywine.

A separate permit will be issued for the operation of each aircraft and its operation will be confined to the landing fields enumerated thereon. No permit will be issued without certification by the State Aviation Commission that the aircraft to be used and the pilots to operate it have been properly qualified and that the airfields to be used are licensed and equipped with necessary facilities.

An order will be issued in conformity with these findings and the Commission will require that the services to be authorized must be inaugurated within six months of the date hereof.

ORDER

In accordance with the opinion of the Commission filed herein on the date hereof, which said opinion is hereby referred to and made a part hereof,

It is, this 5th day of October, in the year Nineteen Hundred and Forty-five, by the Public Service Commission of Maryland,

Ordered: (1) That the exercise by Pan-Maryland Airways, Inc., of the franchises granted to it by its certificate of incorporation be, and the same is hereby, permitted and approved.

(2) That permits be issued to Pan-Maryland Airways, Inc., for the operation of common carrier daylight service by aircraft between Baltimore, Annapolis, Easton, Cambridge, Crisfield, Chestertown, Westminster, Frederick, College Park, Havre de Grace, Bel Air, Elkton, Centreville, and Brandywine, upon presentation to the Commission, by Pan-Maryland Airways, Inc., of certification by the State Aviation Commission that the aircraft to be used and the pilots to operate them have been properly qualified and that the airfields to be used are licensed and equipped with necessary facilities.

(3) That the service hereby authorized shall be inaugurated within six months of the date of this order.

(4) That the exercise by Columbia Airlines, Inc., of the franchises granted to it by its certificate of incorporation be, and the same is hereby, permitted and approved.

(5) That permits be issued to Columbia Airlines, Inc., for the operation of common carrier service by aircraft between the Baltimore Municipal Airport and the municipal airports at

Hagerstown and Cumberland upon presentation to the Commission, by Columbia Airlines, Inc., of certification by the State Aviation Commission that the aircraft to be used and the pilots to operate them have been properly qualified and that the airfields are equipped with necessary facilities.

(6) That the service hereby authorized shall be inaugurated within six months of the date of this order.

(7) That permits be issued to Red Star Motor Coaches, Inc., for the operation of common carrier service by aircraft between the Baltimore Municipal Airport and the municipal airports at Salisbury and Easton, upon presentation to the Commission, by Red Star Motor Coaches, Inc., of certification by the State Aviation Commission that the aircraft to be used and the pilots to operate them have been properly qualified and that the airports are equipped with the necessary facilities; and that permits be issued to the said Red Star Motor Coaches, Inc., for the operation of such service to Ocean City when a suitable airport has been established there.

(8) That the service hereby authorized shall be inaugurated within six months of the date of this order.

SECURITIES AND EXCHANGE COMMISSION

Re The North American Company

File No. 70-1071, Release No. 5870
June 18, 1945

DECLARATION *and amendments thereto, pursuant to § 12(d) of the Holding Company Act, regarding sale of common stock of a subsidiary by a holding company; approval denied. For original decision on proposed sale of stock, see (1945) 59 PUR(NS) 47, which was followed by formal order of disapproval in Release No. 5818, May 23, 1945. Supplemental order, in Release No. 6027, September 4, 1945, provided for reoffering of stock at competitive bidding subject to approval by later order. For order of approval, see post, p. 279.*

Consolidation, merger, and sale, § 45.1 — Competitive conditions — Sale of subsidiary stock.

1. Congress, by enactment of § 12(d) of the Holding Company Act, 15 USCA § 79*l*(d), placed upon the Commission a duty with respect to the maintenance of competitive conditions on the sale of stock of a subsidiary held by a holding company, p. 271.

Consolidation, merger, and sale, § 45.1 — Competitive bidding requirements — Formal compliance.

2. Mere compliance by a selling company with the formal requirements

of a competitive bidding rule does not insure that competitive conditions have been maintained in the sale of securities of a subsidiary company, p. 271.

Consolidation, merger, and sale, § 45.1 — Competitive bidding — Relations between underwriters.

3. Competitive conditions were not maintained, but effective competition was stifled or precluded, where a large group of underwriters making up a syndicate submitted the only bid for common stock of a subsidiary of the seller, the underwriters participating could have underwritten a much larger amount, formation of a rival group was a virtual impossibility because of the number in the syndicate, a purpose of underwriters to preserve traditional banking relationships appeared, and understandings as to standby accounts constituted a limiting factor on underwriting strength which could be brought into competition with the group, p. 271.

Consolidation, merger, and sale, § 52 — Sale of subsidiary stock — Price — Underwriters' spread.

4. The price bid for common stock of a subsidiary and the underwriters' spread were denied approval where the price bid was $36.767 per share, the underwriters were to reoffer the stock to the public at a price of $38.25 per share, and the closing market price on the day the bid was opened was $38.375, under restricted bidding conditions where it appeared that the only problem of the bidding group in fixing a price was to avoid having its bid rejected by the company or disapproved by the Commission, p. 277.

By the COMMISSION: The North American Company (North American), a registered holding company, filed a declaration, and amendments thereto, pursuant to § 12(d) of the Public Utility Holding Company Act of 1935, 15 USCA § 79*l*(d), and the applicable Rules and Regulations promulgated thereunder, regarding the sale, pursuant to the requirements of Rule U–50, of 700,000 shares of its holdings of 1,420,505 shares of common stock (par value $25) of Pacific Gas and Electric Company (Pacific), a subsidiary of The North American Company. The declaration also related to the proposal of North American to apply the net proceeds from the proposed sale of such stock, together with other funds, to the redemption of all of its 606,359 outstanding shares of serial preferred stock, 6 per cent series, par value $50 per share, at the redemption price of $55 per share, plus accrued dividends.

The Commission by order entered herein under date of May 15, 1945, 59 PUR(NS) 47, permitted said declaration, as amended, to become effective subject to the condition that the proposed sale of the common stock of Pacific not be consummated until the results of the bidding pursuant to the provisions of Rule U–50 should have been made a matter of record in this proceeding and a further order entered by this Commission in the light of the record as so completed. The Commission reserved jurisdiction to pass upon the price to be paid the company for such stock, the underwriters' spread, maintenance of competitive conditions, and all legal fees to be incurred in connection with the proposed transactions.

North American filed a further

amendment to the application on May 22, 1945, setting forth the action taken to comply with the competitive bidding provisions of our Rule U–50, which showed that pursuant to the invitation for bids only one bid was received from a group of 144 underwriters headed by Blyth & Co., Inc. of New York city. The price bid by this group for the common stock of Pacific was $36.767 per share, the underwriters to reoffer the stock to the public at a price of $38.25 per share. The closing price of the stock on the New York Stock Exchange on the day the bid was opened (May 22, 1945) was $38.375. The bid was accepted by North American, subject to the release of our reserved jurisdiction which would permit the declaration with respect thereto to become finally effective.

Public hearings were held on May 19 and May 22, 1945, for the purpose of completing the record on those matters with respect to which jurisdiction had been reserved. At these hearings, representatives of North American and Blyth testified, as well as representatives of other investment banking firms which had indicated an interest in the purchase of the stock. We examined the record with respect to those matters upon which jurisdiction had been reserved and issued our order with respect thereto on May 23, 1945, in which we denied final effectiveness of the declaration.[1] In this order we stated that we were satisfied that competitive conditions had not been maintained and that we believed effective competition was stifled or precluded. As a consequence and in the light of other relevant facts disclosed in the record, we were unable to find that either the underwriters' spread or the price bid to North American for the Pacific stock was reasonable. Due to the time factor involved,[2] we were unable to prepare a full opinion setting forth the reasons for our decision in the matter. We stated in our order that a full opinion setting forth the history of the case and giving our reasons for our conclusions would issue in due course. We are now prepared to state our reasons for the conclusions expressed in the order of May 23, 1945. On the basis of the record we make the following findings:

Development of Blyth Account

Since 1919 or 1920, Blyth and its predecessor firm, Blyth Witter & Co., have acted as principal banker for Pacific in practically all financing where an underwriter has been used. The only interruption in this relationship occurred in 1935 when Lazard Freres & Co. was chosen by the then management of Pacific to head an underwriting group with respect to financing by Pacific. However, the record indicates that even during the period when Lazard was considered to be Pacific's principal banker, Blyth was in the group as a major participant.

So far as other banking relationships in the North American system are concerned, Dillon Read & Co.

[1] Holding Company Act Release No. 5818.

[2] The bid was opened by North American at 3 P. M., on May 22, 1945, and the hearing with respect thereto was concluded at 10:10 P. M., on the same date. Under the terms of the underwriting contract, the company was required to obtain Commission approval of the transaction prior to 3 P. M., on May 23, 1945.

has traditionally acted as principal banker for North American and most of its subsidiaries.[8] Apart from Blyth's position with respect to Pacific, the principal exception to Dillon Read's dominant position in this regard has been the leadership of The First Boston Corporation and Coffin & Burr, Incorporated, in financings of Detroit Edison Company.

After the passage of our Rule U–50, these underwriting houses took steps looking toward a continuation of their historical position. The record indicates that they were particularly interested in any large blocks of stock which might be disposed of by North American and in any possible municipal financing growing out of the acquisition of any of the North American properties by municipalities.

The witness for Blyth, Lee M. Limbert, a vice president of the firm in charge of sales and syndication, testified that Blyth was particularly interested in the block of Pacific common stock held by North American. The witness described the period as being "in the beginning of Rule U–50, and the situation was perhaps somewhat chaotic. A lot of people were going out forming groups on just most anything . . . we had no idea who might head groups on Pacific . . . or any of the other companies for whom we had always been the principal underwriter . . ." He indicated further that in order to continue the association of Blyth with Pacific as principal underwriter, it was believed that an early start in forming a group was necessary.

Under date of May 11, 1942, Blyth sent the following letter over the signature of C. E. Mitchell, chairman of the executive committee, to a group of eighty-six underwriters formed about six months prior to that time with respect to a bond financing of Pacific which had been abandoned because of market conditions:

"Gentlemen:

"We have received many inquiries concerning the formation of accounts having to do with Pacific Gas & Electric Company.

"So far as we know, there is no immediate proposal of sale by private negotiation or competitive bidding either of stock of the company owned by holding companies or of securities to be issued by the company itself, nor is there any financing in sight that might result from the formation of revenue districts designed to purchase any part of the company's physical properties.

"However, we think it desirable to say to you that in case of sizable business along any of these lines, we would expect to form an account under our management and to invite you to participate. We are not asking any commitment but we do want you to know that we will be watchful of the situation and will have you in mind should there be developments of interest. If perchance you have any present commitments in interference with this in-

[8] During the period 1920 through 1943, companies within the North American system, exclusive of Pacific and Detroit Edison, issued approximately $1,027,000,000 of securities. Syndicates headed by Dillon Read underwrote approximately 80 per cent of this amount, as indicated by the Federal Trade Commission Report (pursuant to Senate Resolution No. 83, Seventieth Congress, First Session), Vol. Nos. 33 and 34, the National Statistical Service, "American Underwriting Houses and Their Issues," Vol. I to VII, inclusive, and Moody's Public Utilities Manuals.

formal proposal, we would appreciate your advice.

"This letter is being addressed to those houses which have heretofore been underwriters in Pacific Gas & Electric business and to certain houses which accepted an underwriting position with us in the proposed bond issue of $110,000,000 in March 1941, which failed to eventuate.

"Very truly yours,"

Two days prior to the mailing of the above letter, Dillon Read had sent out a similar letter, with respect to certain other subsidiaries of North American, to a list of underwriters which included Blyth. The text of this letter, dated May 9, 1942, was as follows:

"This will confirm the formation of a group, of which Dillon, Read & Co. is the manager, which will be in a position to handle any financing (except as stated in the next paragraph) which may arise through the disposition by The North American Company of a part or all of its interest in one or more of the following companies: The Cleveland Electric Illuminating Company, Union Electric Company of Missouri, Washington Railway and Electric Company, and Wisconsin Electric Power Company. Such financing may involve the purchase, as principal or otherwise, of securities of such companies owned by The North American Company, or revenue bonds issued by a municipality or authority to finance the acquisition of properties of such companies, and in either case may be on a negotiated basis or subject to competitive bidding.

"Members of this group, as such, would not have any interest in the distribution by The North American Company of part or all of its interest in the common stock of Union Electric Company of Missouri if The North American Company should determine to resume negotiations with the group formed in February, 1942, for the purpose of distributing such common stock to the public.

"In accordance with our telephone conversations with you, the amount of your interest in any financing handled by the group will be determined by us, subject to your approval, at a later date.

"In confirmation of your agreement to become a member of the group (subject to your right to withdraw at any time), please sign and return to us the enclosed copy of this letter."

It is to be noted that Dillon Read's letter includes most of the then major subsidiaries of North American with the exception of Pacific and Detroit Edison. The omission of these two companies resulted from discussions between Dillon Read on the one hand and Blyth and First Boston on the other as disclosed in a memorandum of C. E. Mitchell to his executive committee and in a letter of C. E. Mitchell to James B. Black, president of Pacific. The text of this memorandum to the Blyth executive committee, dated May 11, 1942, is as follows:

"Attached is a copy of a letter from Dillon, Read & Co. dated May 9th which is self-explanatory. We have signed and returned to them a duly executed confirmation of acceptance.

"You will note that they have omitted from commitment Pacific Gas & Electric Company and Detroit Electric [Edison] Company, leaving it to

us to handle the former, and First Boston and Coffin & Burr to handle the latter.

"We are preparing to send out a letter to a group regarding Pacific Gas & Electric Company, committing no one to us, but notifying that in case business starts we propose to form a group and extend invitations."

The pertinent part of the text of Mitchell's letter to Black, dated May 13, 1942, is as follows:

"Stimulated by gossip that the city of Cleveland was setting about to buy the North American Properties in that city and surrounding territory, Dillon Read became active in formation of an account to handle financing resulting from any sale of North American interests there or elsewhere. We had quite an argument with them about Pacific Gas & Electric, and First Boston Corporation did the same thing regarding the Detroit situation. I enclose a copy of Dillon Read's form letter in which they bound participants, from which you will see they eliminated these two situations. Their activity, however, stimulated talk about what was going to be done by us with regard to Pacific Gas & Electric. I enclose a copy of the letter which we have sent out, which is self-explanatory, and I hope it will meet with your approval."

It should be noted particularly that the intentions of Dillon Read to handle any and all financing resulting from the sale of North American's portfolio securities encountered "quite an argument" in so far as Pacific and Detroit Edison were concerned. In the end, Blyth's traditional position as the principal banker for Pacific and the corresponding position of First Boston and Coffin & Burr with respect to Detroit Edison were preserved through the agreements reached after the argument referred to above and Pacific and Detroit Edison were omitted from the group of subsidiaries mentioned in Dillon Read's letter of May 9, 1942. Following this concession on the part of Dillon Read, their invitation was accepted by Blyth and the Blyth invitation of May 11, 1942, with regard to Pacific was, in turn, expressly accepted by Dillon Read.

The record discloses that of the 86 firms receiving the Blyth letter of May 11, 1942, four declined membership in the standby account. Among these four was Lehman Brothers, whose declination stated that they wished to be free with respect to any financing which might arise from a sale of Pacific property to a municipality.

The first use of the standby account occurred in connection with the underwriting of $115,000,000 principal amount of Pacific bonds in October, 1944. In this transaction, Blyth negotiated with Pacific for the bonds[4] and enlarged its account to include 168 underwriting firms. Of the 82 firms making up the original standby account, 80 were still doing business at this time and all 80 participated in the enlarged account. Limbert testified that two reasons might be advanced for doubling the size of the original group. In the first place, the issue to be sold came on the market a

[4] Because of a pending appeal from our order denying the application of Pacific for an order declaring it not to be a subsidiary of North American, this financing by Pacific was not subject to the provisions of Rule U-50.

few days after two other very large utility bond financings. Secondly, the witness testified that because of the very small profit which now prevails in bond underwritings, there is a desire to include as underwriters all of the good distributing dealers, so that they can participate to the fullest extent in the profit from the particular piece of business.

The second use made of the standby account, as augmented by the additional firms participating in the October, 1944, transaction, occurred in March, 1945, in connection with the sale by Pacific of $80,000,000 principal amount of its bonds. Although this financing, in its initial stages, had taken the form of a negotiated transaction, the issue went to competitive bidding upon the entry of an order by the Railroad Commission of the state of California after hearings before that body. On the same day in which this order was entered, the Supreme Court of the United States affirmed our decision which had denied the application of Pacific for an order declaring it not to be a subsidiary of North American.[5] As a result thereof, the transaction subsequently became subject to the competitive bidding requirements of our Rule U–50. In this financing, Blyth headed the syndicate, consisting of 146 underwriting houses, which made the successful bid; a second bid was submitted by a group headed by Halsey, Stuart & Co., Inc.

The Blyth account included 71 of the 78 firms which were members of the original standby account and which were available for participation in this financing. Limbert testified that the group was smaller than that which had handled the $115,000,000 issue in October, 1944, partly because of dissatisfaction on the part of a number of houses with the participations available to them in the Blyth group. He further testified that he suggested to a number of these houses that they transfer to the Halsey Stuart syndicate in order to obtain a larger participation. He advised these firms that they could take this action "with no prejudice." A number of firms followed this course and the witness called attention to the fact that they were again included in the Blyth account in connection with he proposed sale of Pacific common stock.

Having accepted a position in the Blyth standby account in May, 1942, Dillon Read was a major participant with Blyth in the underwriting of Pacific bonds in October, 1944, and March, 1945. There is no indication in the record that Dillon Read made any effort to form a group of its own or to join with the Halsey Stuart group when the $80,000,000 bond transaction was thrown open to competitive bidding. In these matters the conduct of Dillon Read appears to have followed the lines laid out in 1942.

Proposed Sale of Pacific Stock

The record discloses that in the middle of March of this year, representatives of Dillon Read and of Blyth were invited by North American to discuss its plans for the sale of Pacific common stock. The first discussion was with C. S. McCain of Dillon Read and on the following day a second discussion was held with C. E. Mitchell

[5] Pacific Gas & E. Co. v. Securities and Exchange Commission, 324 US 826, — L ed —, 65 S Ct 855, decided March 12, 1945.

of Blyth. James F. Fogarty, chairman of the executive and finance committees of North American, testified that in these discussions, which he described as informal and confidential, consideration was given among other things to the relative advantages, so far as price was concerned, of a distribution on the floor of the New York Stock Exchange as contrasted with an offering off the Exchange. On the basis of these and later discussions, North American reached the decision that best results were likely to be obtained from an offering off the Exchange. The representatives of the underwriters indicated that the underwriting spread in connection with such an offering, on the assumption that it were exempt from the competitive bidding requirements of Rule U–50, might range from $1 to $1.25 per share, dependent, of course, upon market conditions at the time.

Fogarty testified that in his discussions with Mitchell the latter showed him the Blyth letter of May 11, 1942, and also advised him of the Dillon Read letter of May 9, 1942, and explained to him the reasons for such letters and why Blyth regarded itself as a logical firm to head a group to dispose of any Pacific common which North American might sell. Fogarty also testified that, until the time of his conversations with Mitchell, he had never heard of the Blyth and Dillon Read letters of May, 1942, and, although he was a director of Pacific at that time, he had never seen or heard of Mitchell's letter to Black explaining the reasons for Blyth's letter of May 11, 1942.

In the early part of April 1945, Fogarty and E. L. Shea, president of North American, presented to the staff of this Commission certain problems arising in the proposed offering and requested an informal expression of opinion from the Commission with respect thereto. The company urged that the proposed transaction be exempted from the competitive bidding requirements of our Rule U–50, in which event it was indicated that negotiations would be undertaken with Blyth and Dillon Read. We informally indicated to North American on April 17th, that in our view, no exemption from the provisions of the rule appeared to be justified on the basis of the facts and circumstances as presented by the company. On the following day, we again considered the matter at the request of Fogarty and, after hearing him we reiterated our views on the transaction. Accordingly, North American filed on April 24th an application in which it proposed to carry out the transaction in accordance with the terms of Rule U–50.

On April 6, 1945, the Dow Jones broad tape carried a story that North American was planning to dispose of about $25,000,000 of its portfolio assets, although the Pacific common stock was not specifically identified. It was apparently not until April 13, 1945, that the press specifically identified Pacific common as the stock to be sold. Our notice of filing and order for hearing with respect to the North American application was released to the press on April 27th.

Wickliffe Shreve, the syndicate manager of Lehman Brothers, testified that on Saturday morning, April 7th, a partner of Merrill, Lynch, Pierce, Fenner & Beane called to his

attention the news account regarding the contemplated sale of portfolio securities by North American. The witness testified that it was fairly clear to him that the proposed sale would involve Pacific common stock. He stated further that his firm and Merrill Lynch had had for some months a standby account, consisting of twenty-five members, to bid on the 200,000 share block of Pacific common held by Standard Gas and Electric Company in the event that such block might later be sold in a public offering. As a result of these discussions, it was determined that they should attempt to enlarge their standby group in an effort to obtain the North American business. He stated further that he checked the firm records and found that Lehman had no commitment to anyone on any Pacific stock to be sold by North American. Accordingly, on the same day, Lehman, acting for itself and Merrill Lynch, sent telegrams to the twenty-five members of their standby account and to an additional 150 underwriting houses believed to be eligible for participation. Although the Lehman telegrams were sent out on Saturday, it was testified that the first responses were not received until the next business day, Monday, April 9th. The latter day appears to be a crucial day with respect to the matters before us and the events which occurred on that day must necessarily be considered in some detail.

Although Dillon Read as well as Blyth had been acquainted by North American with the proposed sale about the middle of March, no action was taken by Dillon Read with respect thereto until April 9th. Henry H. Egly, vice president and syndicate manager of Dillon Read, testified that on April 9th he learned of Lehman's attempt to form a group. He further stated that although his firm was aware of the existence of the Blyth standby group, the Lehman activity was the motivating factor in Dillon Read's decision to enter the field. Accordingly, on the same day Dillon Read invited 93 firms to participate in a group, telephoning those conveniently located and sending telegrams to the remainder.

On the same Monday, April 9th, Blyth began to receive inquiries from various investment houses which had been invited to join with Lehman or Dillon Read in the underwriting of the Pacific stock to be sold by North American. Limbert testified that a number of these houses which were members of the Blyth standby account inquired as to Blyth's intentions in regard to the proposed offering. He testified, moreover, that considerable confusion resulted from the fact that Dillon Read was soliciting participations, inasmuch as many of these firms had received both the Blyth and Dillon Read letters of May, 1942. Limbert testified that telegrams were then sent not only to the members of the original standby account but also to the houses added to that account in connection with the $115,000,000 bond financing of October, 1944. This telegram, which was sent on April 9th to approximately 173 houses including several small dealers on the Pacific coast who had not participated in the bond financing, was as follows:

"With possibility North American may sell portion their holdings Pacific Gas & Electric common we remind

you that in accordance with our letter May 11, 1942, we head an account for private negotiation or competitive bidding and consider you in our account. Please confirm."

As a result of the telegrams sent out by Lehman on April 7th, acceptances were received by Lehman from 47 of the 175 firms whose participation had been solicited. Of the firms remaining, 102 were committed to Blyth, 11 were committed to Dillon Read, and the rest either declined or evinced no interest in the invitation. The syndicate manager of Lehman testified that by April 11th it became apparent that the group which had accepted their leadership had neither the underwriting capacity nor the distributive ability to handle as large a block of listed common stock as was being offered. On April 25th, Lehman sent a letter to those firms which had accepted, stating that the account was being dissolved.

As indicated above, 93 firms were invited by Dillon Read to join with it in the formation of a syndicate to purchase the Pacific stock. The record shows that acceptances were received from 18 of these firms whereas 59 were committed to Blyth, 11 were committed to Lehman, and the remaining firms either declined or made no reply. Egly testified that either on the night of April 9th or the morning of April 10th, the attempt to form a group was abandoned inasmuch as it was believed that the list of acceptances which had been received was not sufficiently satisfactory for them to proceed.

Following the dissolution of the Lehman and Dillon Read accounts and the subsequent transfer of several of their participants to the Blyth account, Blyth found itself at the head of a syndicate comprising 144 members. Limbert testified that after learning of the dissolution of these other accounts he became worried that the number of members in his group might be so large as to prevent any other bidding for the stock and on May 3, 1945, Blyth sent to the members of its group the following letter, to which was attached a list of the houses included in its account:

"You are a member of an account headed by us to bid on an offering by The North American Company of 700,000 shares Pacific Gas and Electric Company common stock on or about May 21, 1945.

"We understand statements have been made that our account is so complete in distributing ability that others have refrained from forming a competing account. This letter is to advise that any member of our account, including yourselves, is free to withdraw at this time and to form or to become a member of another account to bid, without prejudice on future business headed by us. From our standpoint a competing account will be welcome.

"Please advise us by May 10, 1945, of your decision so that allotments of interest in our account may be determined.

"For your information a list of the members of the proposed account as now constituted is enclosed."

Copies of the letter were also sent to North American and to this Commission but not to Lehman or to Dillon Read and no efforts were made to give the letter any other publicity. By May 10th, the date set in the letter

by which replies were to be received, all of the 143 houses to which the letter had been sent had indicated their desire to go along in the Blyth group.

The witness for Dillon Read testified that his firm learned of Blyth's May 3rd letter soon after its mailing but that his firm, upon reconsideration, decided not to go ahead inasmuch as during the period between April 9th and May 3rd his firm had been active on several other pieces of business and that "we just had no one that we could put on the work which this job entailed, so we decided not to make any further efforts to form an account." The syndicate manager of Lehman testified that his firm also heard of the May 3rd letter soon after its release but that they did not take any steps to renew their account. In this respect, he testified, "Well, I didn't know how many of the fifty people that had accepted our invitation might have subsequently gone with Blyth, and I did not feel that there would still be enough houses available to complete what, in my opinion, would have been a necessary bidding account on 700,000 shares of this listed common stock."

Maintenance of Competitive Conditions

[1–3] As previously indicated, § 12(d) of the act, 15 USCA § 79*l* (d), is applicable to the proposed sale of Pacific stock. In enacting this provision, Congress placed upon us a duty with respect to the maintenance of competitive conditions.[6]

On April 7, 1941, this Commission adopted Rule U–50 which requires public invitation of proposals for the purchase or underwriting of securities issued or sold by registered holding companies and their subsidiaries, including sales under § 12(d). The purpose of this rule was to foster competition and neutralize the dominant position of the traditional banker, and also to provide a valuable guide in the determination of the reasonableness of price and spread. A full statement of the statutory basis of the rule and of the reasons which impelled us to adopt it are set out in our statement of April 7, 1941, accompanying the promulgation of the rule (Holding Company Act Release No. 2676) and need not be repeated here except to note the following observation of the National Power Policy Committee:[7]

"Fundamentally the holding-company problem always has been and still is, as much a problem of regulating investment bankers as a problem of regulating the power industry."

Of course, mere compliance by the selling company with the formal requirements of the rule does not ensure that competitive conditions have been maintained. In the present case we are satisfied that competitive conditions were not maintained; on the

[6] Section 12(d) provides as follows:
"It shall be unlawful for any registered holding company, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to sell any security which it owns of any public-utility company, or any utility assets, in contravention of such rules and regulations or orders regarding the consideration to be received for such sale, *maintenance of competitive conditions*, fees and commissions, accounts, disclosure of interest, and similar matters as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this title or the rules, regulations, or orders thereunder." (*Italics supplied.*)

[7] H. D. 137, 74th Congress, 1st Session, p. 6.

contrary, effective competition was stifled or precluded.

The syndicate of 144 firms headed by Blyth, which submitted the only bid received in response to North American's solicitation of competitive bids, included nearly all of the larger underwriting firms which customarily participate in common stock financing. The group included 51 New York houses, 28 from elsewhere in the Eastern States, 35 from the Middle West and South, and 30 from the Far West.[8] Participations of 25,000 shares were allotted to each of 10 firms,[9] 15,000 shares to each of 3 firms,[10] 10,000 shares to each of 5 firms,[11] 7,000 shares to each of 14 firms, and 5,000 shares to each of 16 firms. A total of 64 houses each received participations of less than 2,000 shares while the participations of 32 houses ranged from 2,000 to 4,000 shares, inclusive.

The Blyth representative testified that, without exception, the participations accorded members of the syndicate were distinctly smaller than the financial strength and distributive capacity of the members would have dictated. He stated further that those houses participating to the extent of 25,000 shares could have underwritten as much as 100,000 shares each and that unquestionably, therefore, these 10 firms alone could have more than underwritten the entire issue. With respect to distributive capacity, he testified that without exception the houses in the Blyth account would have been able to distribute at least twice as much as the participations allowed them and that, in almost every case, request had been made for a larger participation.

While admitting unequivocally that the Blyth group was larger than would have been required to handle the offering, Limbert sought to demonstrate that there remained apart from his group sufficient underwriting strength to form a second group if someone took the leadership in doing so. To this end he prepared and submitted a list of 50 firms not included in his syndicate which, in his opinon, were interested in common stocks and could easily underwrite the 700,000 shares of Pacific stock being offered by North American.

In our view this testimony falls far short of establishing that competitive conditions were maintained. In the first place, the testimony serves to emphasize the excessive size of the Blyth group, since by the same reasoning it can be demonstrated that such group contained at least twice as much underwriting strength as necessary. Secondly, as will appear below, it is not entirely free from doubt that the remaining 50 houses could successfully have organized a rival syndicate under the most favorable conditions; under the actual conditions which were created here, formation of a rival

[8] The Pacific coast firms in the syndicate included most of the larger houses in that area. These firms were granted participations in the aggregate of 94,000 shares and, in common with practically all of the other firms in the account, expressed dissatisfaction with the small size of their participations.

[9] Blyth & Co., Inc.; The First Boston Corporation; Goldman, Sachs & Co.; Harriman Ripley & Co., Incorporated; Kuhn, Loeb & Co.; Mellon Securities Corporation; Smith, Barney & Co.; Stone & Webster and Blodget, Incorporated; Union Securities Corporation; Dean Witter & Co.

[10] Eastman, Dill & Co.; Glore, Forgan & Co.; Merrill Lynch, Pierce, Fenner & Beane.

[11] Hornblower & Weeks; Lee Higginson Corporation; F. S. Moseley & Co.; Paine, Weber, Jackson & Curtis; E. H. Rollins & Sons, Incorporated.

group was a virtual impossibility. And finally, maintenance of competitive conditions does not mean, in any event, that underwriting strength may be combined indefinitely and indiscriminately, beyond the needs of the situation, so long as there is permitted to exist a bare theoretical possibility of competition. Competitive conditions are not maintained if any steps are taken which inhibit the free operation of competition in a given situation, taking into account all relevant facts including the nature of the financing and the total available underwriting capacity.

It is evident that the purpose of the Blyth and Dillon Read letters of May, 1942, was to preserve the traditional banking relationships which existed within the North American system. It seems equally clear from the content of the letters and of the memorandum previously quoted and from the subsequent conduct of the principals that an understanding was reached at that time by Dillon Read, Blyth, and First Boston as to the leadership of syndicates formed with respect to the securities of certain of the system companies, including Pacific.

The Blyth letter of May 11, 1942, stated that no commitment with respect to the business was being sought and Limbert, in his testimony with respect to the standby account, stressed this circumstance. Nevertheless, the Blyth telegram of April 9th, quoted above, and other evidence in the record establish that for all practical purposes a commitment was both effected and adhered to. Of the 82 firms which received the Blyth letter of May, 1942, 80 were still doing business at the time of the Pacific bond financing in October, 1944, and all 80 participated in the financing. In March, 1945, 78 of these firms were available for participation in the second bond financing and 71 were included in the Blyth syndicate. In the present syndicate, 70 of the 78 available firms participated. It may also be noted in this connection that 64 of these firms were invited to join the Lehman group and 44 were invited to join the Dillon Read group, with the result that none accepted the Lehman invitation and only 4 accepted the invitation of Dillon Read.

As to the attitude with which such commitments are regarded among underwriters, we were particularly impressed with the testimony of the syndicate manager of Lehman with respect to his actions after learning that North American proposed to sell certain of its portfolio assets:

Q. You say that when you heard about the proposal of North American that you checked your records to see whether or not you had any commitments with respect to it?

A. That is right.

Q. Would that be a thing which would normally affect your judgment as to whether or not you would form a group?

A. Oh, indeed so. If we had accepted a participation in someone else's account a year ago, two years ago, three years ago, we would hardly at some subsequent date go out and form an account of our own to manage on our own behalf.

Q. Is that one of the purposes of the so-called standby account?

A. Why, I think so. We expect it from other participants in accounts that we manage and we ac-

cord other managers the same consideration.

The record discloses that the firms participating in the final Blyth syndicate to the extent of 25,000, 15,000, 10,000, or 7,000 shares of Pacific stock were without exception included in the original standby account. Moreover, the thirty-two firms taking participations of these amounts encompassed practically all of the firms which might otherwise have been available to head competing accounts. In this connection we note Limbert's testimony that, in his opinion, any one of fifteen of these firms would be capable of heading a syndicate to handle the Pacific stock. In view of the strength of the firms included in the original standby account and their general adherence to the 1942 arrangements, we would have no difficulty, even if there were no other facts, in finding that the use of the original standby account in connection with the offering of Pacific common stock constituted a serious limiting factor on the underwriting strength which could be brought into competition with the Blyth group.

However, as we have seen, Blyth was not content to confine its syndicate to the original standby group alone, and its telegram of April 9, 1945, was accordingly sent not only to this original list but also to every house which had participated in the $115,000,000 bond financing of October, 1944. We note particularly that the language used in this telegram was not that of a mere invitation to participate in the Blyth group. Instead, it contained a sharp reminder that the recipients were already considered by Blyth to be members of its account.[18] We have already noted the force inherent in a so-called "informal" commitment; the language employed in the Blyth telegram leaves no room for doubt as to the position of the recipient.

As indicated above, Limbert testified that the firms in the Blyth syndicate were capable of handling participations at least twice as large as those actually allotted to them. Since houses in the original standby account were allotted in excess of 570,000 of the 700,000 shares of Pacific stock the allocation to them of the entire 700,000 shares would have increased their participations by less than 25 per cent. Obviously, therefore, the addition of more than seventy firms to the account was unnecessary from either an underwriting or a distributive standpoint. Nor are we impressed with the explanation that these firms had participated with Blyth in the bond financings, and were thus entitled to a place in the group formed to purchase the stock. Even though we were to assume that Blyth was merely sharing the business with these additional firms, we cannot overlook the adverse effect upon competition of an invitation which obviously served to preëmpt still further a field which had already been narrowed excessively.

In this connection it will be recalled that Limbert prepared a list of fifty houses outside the Blyth group which he believed could underwrite the Pacific stock offered by North American. He testified that, on the basis of his experience as syndicate manager, he was able to estimate the extent

[18] See text of April 9, 1945, telegram quoted at p 269.

to which each of such houses would be capable of participating. On this basis, he assigned an aggregate of 1,150,000 shares of Pacific stock to the fifty firms on his list. While at first glance there appears to be a sizable margin over and above the 700,000 shares offered by North American, an examination of the list reveals that nine of these fifty firms had participated with Blyth in the bond financing and had thus been offered a participation in the group formed by Blyth to purchase the common stock. The fact that they did not accept a position in Blyth's account would seemingly indicate that they were not interested in this particular transaction. Deducting the 350,000 shares which Limbert assigned to these houses and considering the probability that his estimated allocations represent maximum participations, it may be seen that his list of available houses dwindles to a marginal point where its ability to submit a competitive bid is open to some question. Moreover, apart from the question of the financial capability of these houses to underwrite the Pacific stock, it is obvious that the mere compilation of an arbitrary list of fifty firms provides no assurance that leadership would be forthcoming to convert such a list into an effective competing account.

As previously indicated, it is unnecessary for the purposes of this case to determine whether an additional group might have been formed from the firms outside the Blyth account. It is clear in any event that when such firms were divided between Lehman and Dillon Read, neither could have formed an account with sufficient strength to handle the offering of Pacific stock. Thus the forty-seven firms which accepted Lehman included twenty houses which were on Limbert's list and the estimated underwriting capacity assigned by him to these twenty firms aggregated 385,000 shares of Pacific common stock. We note that the remaining twenty-seven houses are small, and the fact that they were not included in Limbert's list may constitute an indication that the underwriting capacity of these individual houses was not, in his view, substantial. In any event, we have no difficulty in concluding that the strength of the houses accepting Lehman was inadequate to compete with the Blyth syndicate. Of the eighteen houses which accepted the Dillon Read invitation, nine were listed by Limbert. To these he assigned an estimated underwriting capacity of 350,000 shares of Pacific stock. An additional four of these eighteen firms subsequently joined the Blyth group and were allocated an aggregate participation of 15,000 shares. It seems apparent that these eighteen houses could not have been formed into a syndicate capable of competing successfully with the Blyth group.

In view of the uncertainty as to whether even one competing group might successfully have been formed and the virtual impossibility that two such groups could have been assembled, the events and circumstances surrounding Dillon Read's activities on April 9th after Lehman entered the field deserve particular attention. We have previously noted that in all financings by Pacific subsequent to the creation of the Blyth standby account in 1942, including the bond financing

of March, 1945, Dillon Read recognized the Blyth leadership and was a major participant. Moreover, the record specifically indicates that both Dillon Read and Blyth considered the standby accounts formed in 1942 as being still in existence. Although Dillon Read was consulted by North American at an early stage in the plans to sell the Pacific stock, Fogarty testified that at no time did representatives of the firm indicate to him that Dillon Read would or would not form an account to bid for the stock, nor did he seek any such action on their part until about the time of Blyth's May 3rd letter. Dillon Read was aware of the Blyth standby account and of the further fact that Blyth was also consulted by North American. Fogarty testified that he acquainted McCain, of Dillon Read, with the subject matter of his discussions with Mitchell, of Blyth, and that in these discussions Mitchell had announced that his firm had an account which could handle the transaction. Egly testified, however, that this knowledge of Blyth's strong position in the field did not serve to arouse Dillon Read to action in forming an account nor was serious consideration given thereto until April 9th. His testimony as to the actual motivating factor for his firm's action on April 9th is clear. This motivating factor, he asserted, was the attempt of Lehman to form an account. To this attempt Dillon Read reacted promptly with its telegrams of April 9th, which constituted an action in apparent disregard of the 1942 understanding. It should be kept in mind that Dillon Read was undoubtedly aware of Fogarty's intention, as expressed to this Commission, to negotiate with Blyth and Dillon Read in the event that we were to grant an exemption from the provisions of Rule U-50. As indicated above, it was not until April 17th that North American received our informal expression of opinion with regard to an exemption.

Whatever chance may have existed for the formation of a second group vanished completely when Dillon Read entered the field. While ostensibly deviating from the understanding of 1942 the net effect of Dillon Read's action was to guarantee that the leadership of Blyth would go unchallenged. We are unable to conclude that this result was not foreseen and intended.

We turn now to a consideration of the Blyth letter of May 3rd which resulted from Blyth's avowed concern over the lack of a competing group. It will be recalled that the letter of May 3rd informed the members of Blyth's group that they were free to join other accounts without prejudice. It will also be recalled, however, that the letter came at a time when no acknowledged leader remained in the field and it was, as we have seen, ineffective. Although it must have been as obvious on April 9th as on May 3rd that its group was larger than necessary, Blyth had not been deterred from enlarging its standby account. Moreover, when complaints were received on the meagerness of anticipated allotments no firms were advised to join a rival account, as had been done in the March, 1945, bond financing when Halsey Stuart was in the field against Blyth. Thus, during the period when competition might in some degree have been nourished and

kept alive, Blyth's actions had an exactly opposite effect.

Even the action of May 3rd held within itself the possibility of discouraging the formation of a rival account. Although it was testified that the list of member firms was attached to the letter for the purpose of giving the members some idea of the small allocation of Pacific stock which they could expect, it would certainly serve to demonstrate also the great strength of the Blyth group and to emphasize the difficulty of successfully competing with it even though it were somewhat reduced in size. The letter itself made no mention of the limited scale of participations to be expected.

The May 3rd letter came as the culmination of a series of measures beginning in 1942, which progressively precluded and stifled the possibility of effective competition. We have found that the understanding reached as to leadership in any Pacific financing and the effective commitment of nearly all the large houses to Blyth leadership in 1942 precluded the potential competition of the largest segment of investment banking strength. We have found also that the enlargement of this group at the moment of learning that competition was being attempted, and when the Blyth group was definitely in no need of additional strength, gave further assurance that no competing bid would actually appear. Finally, we have seen that the underwriting houses remaining outside the enlarged Blyth group were divided into two hopelessly small segments by Dillon Read's sudden and short-lived entry into the field. In view of this history, it is not surprising that the members of the Blyth account, without exception, chose to remain with Blyth notwithstanding the May 3rd letter. We cannot view that letter as more than a belated gesture devoid of any real chance to produce effective competition.

Price and Spread

[4] As we have previously stated, the price bid by the Blyth group for the common stock of Pacific was $36.767 per share, the underwriters to reoffer the stock to the public at a price of $38.25 per share. The closing price of the stock on the New York Stock Exchange on the day the bid was opened was $38.375. This resulted in a spread of $1.483 per share and a difference of $1.608 between the price per share to the company and the closing market price of the stock on the day the bid was opened. While it is recognized that the discount off the closing market price of 12½ cents does not accrue to the underwriters, the existence of such a discount is of benefit to them in that it facilitates the marketing of the stock and thereby lessens the risk assumed in the underwriting. Therefore in passing upon the reasonableness of the spread this discount must be taken into consideration. The spread of $1.483 per share is equivalent to 3.88 per cent of the public offering price. The difference of $1.608 between the bid price per share to the company and the closing market price is equivalent to 4.19 per cent of the closing market price.

The record discloses that after the bid was opened at 3 P.M., the board of directors of North American did not accept it by 3:30 P.M., the time specified in the underwriting agree-

ment for acceptance or rejection of the bid. Instead, the matter was kept under consideration until 4:20 P.M., when the bid was finally accepted by a unanimous vote of the members of the board present, two members being absent. From Fogarty's testimony it appears that the extended consideration given by the board was due to the fact that the bid received was disappointing to North American.

Although the price to be paid the company for the stock was determined by Blyth, as representative of the underwriters, with the concurrence of the underwriters in the syndicate present at the final price meeting, the size of the syndicate necessitated that several price meetings be held in various parts of the country on the previous day. Thus, on Monday, May 21, 1945, meetings were held in San Francisco, Los Angeles, Chicago, and New York. The final price meeting was held at 2 P.M. on Tuesday, May 22nd, and forty-eight members attended, including all the larger participants. At this meeting it was apparent, because of the knowledge that North American was engaged in stabilizing operations on that day, that the closing price would be not less than $38.375.

The Blyth representative testified that at the price meetings the necessity for stabilizing by the syndicate prior to the offering [13] was explained and the members were advised that no other group had qualified to bid. It was further explained that it was possible that qualification could be waived by North American and that another bid could be put in up to the time bids were opened. We note, however, that in view of the history of the case this possibility existed in theory only and that for all practical purposes the members could rest assured that no other bid would be submitted. It therefore appears that the group's only problem in fixing a price to the company was to avoid having its bid rejected by the company or disapproved by us. It was the familiar problem of charging as much as the traffic would bear.

In considering the price and spread, when we entered our order of May 23rd, we had before us, in addition to all of the above facts and circumstances, a compilation of data concerning offering prices, underwriting commissions, and discounts from market price, with respect to all recent secondary offerings of stocks. However, these data were useful only in a general way. While they did not afford any specific guide because none of the offerings was closely comparable in kind and amount they indicated generally that the underwriters' spread on the Pacific stock was on the high side and supported the statement of the management of North American that the bid was "disappointing." The uninhibited operation of our Rule U-50 would have afforded us a most helpful guide as to a proper price and spread but since competition was foreclosed we were deprived of that guidance in this case. In view of these circumstances, we were unable to make

[13] Since there was to be a period of twenty-four hours between the submission of the bid and the time of the proposed offering, the syndicate proposed to stabilize the market for the stock during that period. Although it was not known at the time of the price meetings how many shares the syndicate might have to purchase for stabilizing purposes, it subsequently developed that the syndicate thus acquired only 2,200 shares of Pacific common.

the requisite statutory finding that the price to the company and the underwriters' spread were reasonable.

Rule U-50 was adopted as a result of our conclusion, among others, that the maintenance of competitive conditions in the sale of securities, in conformity with the applicable standards of the act, was hampered by the practice of financing through traditional or historical bankers. It appears, however, from the record before us that the history of the Blyth syndicate reflects a program to maintain Blyth's long-established position as underwriter with respect to the securities of Pacific, and that the standby account set up in 1942 was a major instrument in carrying out this program.

The record in this case also discloses that there are in existence today numerous standby accounts for securities which might be issued or sold by registered holding companies and their subsidiaries, and that such accounts have frequently been created far in advance of any actual or concrete proposals for such sales. Although we are not now prepared to say that all such standby accounts are necessarily improper in the context of Rule U-50, it does appear that the existence of such accounts generally stands as an important threat to fair and effective competition. There is a vital public interest in securing fair prices through such competition for the securities of companies subject to the act. This need is highlighted by the large volume of financing attendant upon the programs of the various systems for compliance with the standards of § 11. In order that we may take appropriate steps to avoid a repetition of this aspect of the problem with which we have been concerned in this opinion, we have instructed our Public Utilities Division to make a study of existing standby accounts in relation to the operation of Rule U-50.

SECURITIES AND EXCHANGE COMMISSION

Re The North American Company

File No. 70-1071, Release Nos. 6053, 6090
September 17, 28, 1945

DECLARATION *and amendments thereto, pursuant to § 12(d) of the Holding Company Act, relating to the sale of common stock of a subsidiary held by a holding company; sale at competitive bidding approved after reoffering. For opinion in connection with denial of approval of earlier bid, see ante, p. 261.*

Consolidation, merger, and sale, § 52 — Sale of subsidiary stock — Price — Underwriters' spread.

The price bid for common stock of a subsidiary and the underwriters' spread were approved where the highest bid was $38.961 per share (another bidder offering $38.85 per share), the underwriters were to reoffer

the stock to the public at the market price of $40 prevailing at the time the bids were opened, and the final bidding was as satisfactory as could be expected under conditions where inhibiting factors were brought into play by traditional ties implicit in underwriting history.

By the COMMISSION: The North American Company, a registered holding company, having filed on August 22, 1945, its fifth amendment to its application and declaration, and thereafter from time to time further amendments, pursuant to §§ 6(a), 7, 9, 10, and 12 of the Public Utility Holding Company Act of 1935, 15 USCA §§ 79f(a) 79g, 79i, 79j, 79*l*, regarding (a) the reoffering for sale by The North American Company, in accordance with the provisions of Rule U–50 promulgated under the act, of 700,000 shares of common stock of Pacific Gas and Electric Company, a subsidiary company of The North American Company, (b) the application by The North American Company of the net proceeds of the proposed sale of such stock, together with other treasury funds, to the redemption of its 606,359 outstanding shares of serial preferred stock, 6 per cent series, of the par value of $50 per share, at the redemption price of $55 per share, or an aggregate expenditure of $33,349,745, plus accrued dividends, (c) the proposed modification of its loan agreement, dated August 3, 1943, with The Chase National Bank of the city of New York and certain other banks, and (d) the purchase upon the New York Stock Exchange, the San Francisco Stock Exchange and the Los Angeles Stock Exchange of such number of shares of the common stock of Pacific Gas and Electric Company as The North American Company may deem appropriate, in order to stabilize the price of such shares on the day fixed by it for the opening of proposals for the purchase of said stock; and, The North American Company having requested that our order contain the recitals specified by Supplement R of Chap I and § 1808(f) of Chap II of the Internal Revenue Code, 26 USCA § 1808(f), as amended, by reciting that the sale by The North American Company of the Pacific Gas and Electric Company common stock and the redemption by The North American Company of its serial preferred stock, 6 per cent series, are necessary or appropriate to effectuate the provisions of § 11(b) of the act, 15 USCA § 79 k(b); and

The Commission having by order entered herein under date of September 4, 1945, granted the application, as amended, and permitted the declaration, as amended, to become effective subject to the condition that the proposed sale of the 700,000 shares of common stock of Pacific Gas and Electric Company by The North American Company shall not be consummated until the results of competitive bidding pursuant to Rule U-50 shall have been made a matter of record in this proceeding and a further order shall have been entered herein by this Commission in the light of the record as so completed; and

The record herein having been completed in respect of the matters heretofore reserved and it appearing that

The North American Company received two proposals from two groups of underwriters for the purchase of the 700,000 shares of common stock of Pacific Gas and Electric Company, as follows:

Bidder	Price to Company
Dillon, Read & Co., Inc.	$38.961
Blyth & Co., Inc.	$38.85

And it appearing further that The North American Company has accepted the proposal of Dillon, Read & Co. and that said stock will be offered for sale to the public at a price of $40 per share resulting in an underwriters' spread of $1.039 per share.

The Commission finding that the sale and transfer by The North American Company of the said 700,000 shares of common stock of Pacific Gas and Electric Company and the application of the net proceeds from such sale, together with other funds, by The North American Company for the redemption of its outstanding shares of preferred stock 6 per cent series are necessary or appropriate to effectuate the provisions of § 11(b) of the Public Utility Holding Company Act of 1935 and a step in compliance with our order of April 14, 1942;

It is *ordered* that the application, as amended, be and it is hereby granted, and the declaration, as amended, be and it is hereby permitted to become effective forthwith, subject to those terms and conditions prescribed by Rule U-24.

It is *further ordered* that the following transactions authorized and permitted by this order are necessary and appropriate to the integration or simplification of the holding company system of The North American Company, and are necessary and appropriate to effectuate the provisions of § 11(b) of the Public Utility Holding Company Act of 1935:

(1) the sale and transfer by The North American Company of 700,000 shares of common stock, $25 par value, of Pacific Gas and Electric Company represented by Certificates Nos. TC1 to 6,888, inclusive, and TF1 to 570, inclusive, to the purchasers thereof as hereinabove provided at $38.961 per share.

(2) the expenditures or investment by The North American Company of the proceeds of such sale, amounting to $27,272,700, together with other funds, as a distribution by The North American Company in redemption of the 606,359 outstanding shares of its preferred stock, 6 per cent series, $50 par value.

It is *further ordered* that jurisdiction be and the same is hereby reserved over all legal fees to be incurred in connection with the proposed transactions. [September 17, 1945.]

An opinion will issue in due course.

Memorandum Opinion and Order
[*September 28, 1945*]

This is a further opinion of the Commission regarding the sale by The North American Company (North American) of 700,000 shares of common stock of Pacific Gas and Electric Company (Pacific). The sale was initially disapproved by us on May 23, 1945,[1] because of our finding that competitive conditions had not been maintained. As a consequence thereof, we were unable to find that the

[1] Holding Company Act Release No. 5818.

price and spread were reasonable. The history of this transaction prior to our order of May 23, 1945, and the details of the bidding on the original offering are set forth in full in our supplemental findings and opinion [2] issued June 18, 1945.

By our order of September 4, 1945,[3] we permitted North American to reoffer this stock for sale at competitive bidding pursuant to the provisions of Rule U-50 and on September 17, 1945, the sale was approved by order [4] without opinion.

The record discloses that subsequent to our order of May 23, 1945, James H. Fogarty, on behalf of The North American Company, indicated to C. E. Mitchell, of Blyth & Co., Inc., North American's intention to reoffer the 700,000 shares of Pacific stock at such time as an additional bidding group or groups had been formed. Fogarty testified also that he had conversations with J. S. McCain of Dillon, Read & Co., Inc., and with representatives of Lehman Brothers and The First Boston Corporation in an effort to create interest in the formation of additional bidding groups. The record shows, however, that only Blyth and Dillon Read made any attempts to form accounts.

Lee M. Limbert, the syndicate manager of Blyth, testified that upon entry of our order of May 23, 1945, he considered the former Blyth account to be dissolved. Because of numerous inquiries from members of that account, however, a letter was written to all members on June 14, 1945, formally dissolving the syndicate. Limbert testified that no action toward forming a new account was contemplated by his firm until such time as they might be given notice by North American of the formation of a competing group, since it was obvious that a reoffering would not be attempted until a competing account was in the field. Such notice was given by officials of North American on August 13, 1945. Blyth had, however, been aware that an account was being formed by Dillon Read and in response to inquiries from members of its former account, Blyth had expressed its interest in having a competing account formed and encouraged such firms to join the Dillon Read group if invited to do so.

Henry H. Egly, the syndicate manager of Dillon Read, testified that on July 26, 1945, after his firm had been requested by Fogarty to form an account to bid on the Pacific stock, invitations were sent to sixty-seven houses to participate in such an account. Forty-five acceptances were received in response to these invitations. Feeling that the resulting group was not sufficiently strong to handle the business, Dillon Read then sent invitations to an additional list of underwriters. As a result, the bidding group of eighty-two firms was completed.

Upon receipt of notice from North American that the Dillon Read account had been completed, Blyth communicated with a list of underwriters approximately identical with that which had comprised its former account. In response to these invita-

[2] Holding Company Act Release No. 5870, *ante*, p. 261.

[3] Holding Company Act Release No. 6027.

[4] Holding Company Act Release No. 6053 (September 17, 1945), *ante*, p. 279.

tions, acceptances were received from 112 firms.

As indicated in our order of September 17, 1945, North American received two bids for the 700,000 shares of Pacific stock, the Blyth group bidding $38.85 per share and the Dillon Read group bidding $38.961 per share. The proposal of the Dillon Read group was accepted by North American. The only difference in the terms of the first and second offerings lay in the reduction from twenty-four hours to three hours of the period between the opening of the bids and the time designated for securing the order of this Commission which would permit the public offering of the stock.

The successful bid in the present offering involved a spread of $1.039 as compared with the spread of $1.483 proposed by the former Blyth group in May. In addition, the Dillon Read bid contemplated a reoffering at the market price of $40 per share which prevailed at the time bids were opened [5] whereas the earlier Blyth bid was predicated upon an offering at ⅛ point off the market. The combined effect of the lower spread and the offering at the market price represents a saving to North American of 56.9 cents per share, or a total of $398,300,[6] as compared with the bid of the former Blyth group.

In line with our previous finding that the size of the original Blyth group was excessive, it is interesting to note the testimony both of Limbert and Egly to the effect that their present syndicates, although distinctly smaller than the original Blyth group, contained underwriting and distributive strength in excess of the requirements of this offering. The Dillon Read group contained twenty-nine members of the former Blyth account. These twenty-nine firms had been allocated 199,000 shares of Pacific stock in the original Blyth syndicate, whereas their allocations in the Dillon Read group aggregated 423,000 shares. As to the new Blyth account, maximum participations amounted to 35,000 shares as contrasted with 25,000 shares in the previous offering and the remaining levels of participation were increased proportionately.

On the basis of the entire record, we are not satisfied that competition for the Pacific stock was limited by necessity to two underwriting groups; on the contrary, considering the size of the offering and the ready marketability of the securities, we believe that the free operation of competition might well have resulted in the formation of more than two bidding groups. However, we permitted the stock to be sold on the basis of our conclusion that the final bidding was as satisfactory as could be expected under present conditions in view of the inhibiting factors which were brought into play by the traditional ties implicit in the long history of the original Blyth

[5] Stabilizing operations were conducted by North American on the New York Stock Exchange, the Los Angeles Stock Exchange, and the San Francisco Stock Exchange on the day on which bids were opened. A total of 600 shares were purchased in this manner by North American prior to the opening of the bids at noon, at which time stabilization was taken over by the underwriters.

[6] Changes in market levels since the original offering in May resulted in aggregated proceeds to North American greater by approximately $1,500,000 than would have been the case had the transaction been consummated at the time of the first offering.

account, as discussed in our earlier findings.

Fees and Expenses

The reoffering of the Pacific stock has entailed certain increases, estimated by North American at $36,750, in the fees and expenses. The expenses, including out-of-pocket expenses of Pacific arising from the proposed transaction, will be paid by North American, except the fee of counsel for the underwriters which will be paid by the successful bidder. Total estimated fees and expenses in connection with the entire transaction are shown below:

TABLE I

Registration fee	$2,800
Printing of registration statement, prospectus, exhibits, and other documents including temporary stock certificates	45,000
Transfer agents and registrars' fees and expenses	4,500
Fees of counsel for North American	
Sullivan & Croswell, New York	9,000
Chichering & Gregory, California	9,000
Fees of Counsel for underwriters	
Cahill, Gordon, Zachry & Reindel, New York	9,000
Orrick, Dahlquist, Neff, Brown & Herrington, California	9,000
Accountants' fees	13,250
Miscellaneous expenses	25,000
Total	$126,550

The fees and expenses in the amounts estimated do not appear unreasonable and we make no adverse findings with respect thereto. Accordingly, jurisdiction heretofore reserved by our former order over the legal fees will be released.

It is therefore *ordered* that jurisdiction over the legal fees reserved by our order of September 4, 1945 (Holding Company Act Release No. 6027), be and the same is hereby released.

WISCONSIN PUBLIC SERVICE COMMISSION

Re Wisconsin Southern Gas Company

CA-1991
July 17, 1945

APPLICATION *for modification of certificate authorizing construction and installation of gas pipe line; granted. For decision on original application for certificate, see (1942) 45 PUR(NS) 8, 11, and for related case before Federal Power Commission, see (1944) 56 PUR(NS) 65. See also post, p. 291, for decision of Federal Power Commission subsequent to amendment order of Wisconsin Commission.*

Certificates of convenience and necessity, § 168 — Application for amendment — Matters considered — Statutory change — Gas.

1. Subsection (4a) of § 196.49, Wisconsin Statutes, created by enactment of Chap 48 of the Laws of 1943 after the entry of a Commission order authorizing the construction and installation of a gas transmission line,

is applicable in a proceeding to secure an amendment of the certificate, and testimony relative to the matters directed to be considered by the Commission, pursuant to the new statute, is properly offered and received, p. 287.

Certificates of convenience and necessity, § 104 — Gas facilities — Substitution of natural for manufactured gas — Public interest.

2. The fact that natural gas will be a cheaper and better fuel than any manufactured gas which a local gas utility could supply to its public is sufficient to justify a finding by the Commission that the substitution, as proposed under an application for authority to construct and install a gas transmission line, is in the general public interest and is required by public convenience and necessity, unless the benefits which customers will receive are outweighed by disadvantages which objectors (interested in solid or liquid fuels) claim will result from substitution, p. 288.

Monopoly and competition, § 3 — Substitution of natural for manufactured gas — Effect on other industries.

3. Authorization should be granted for construction of a pipe line to obtain natural gas to be substituted by a local gas utility for manufactured gas when this will provide a cheaper and better fuel for customers, although there may be some temporary disruption of business and employment of those engaged in the transportation, distribution, or handling of other fuels, which is merely one of the conditions under which all economic progress is attained, p. 288.

By the COMMISSION: By order of April 16, 1942, 45 PUR(NS) 8, 11, the Commission issued to Wisconsin Southern Gas Company a certificate authorizing the construction and installation of approximately 10 miles of 3-inch welded steel pipe to connect its facilities at Lake Geneva with the facilities of Natural Gas Pipeline Company of America at the Illinois state line near Genoa City, Walworth county, and also authorizing the construction and installation of terminal facilities in the city of Lake Geneva, all at an estimated expense of $45,000. The construction of the pipe line, as thus authorized, was delayed because the necessary Federal authority had not been obtained by Natural Gas Pipeline Company of America to make the connection above referred to. Accordingly, the time for exercising the authority granted by the order of April 16, 1942, was extended to May 1, 1945.

On January 9, 1945, Wisconsin Southern Gas Company filed an application for a modification of its existing certificate so as to authorize the construction and installation of a 4½-inch (outside diameter) pipe line in lieu of the 3-inch pipe line previously authorized.

Hearing pursuant to notice before the members of the Commission at Madison on February 8, 9, and 10, 1945.

Under date of April 20, 1945, the Commission ordered further hearing directed to the question of whether the supply of natural gas that will be made available to the Wisconsin Southern Gas Company by means of the proposed pipe line was sufficient to enable that utility to continue its service to the public by the distribu-

tion of natural gas instead of manufactured gas for the period of time necessary to justify the proposed change from manufactured to natural gas. Such further hearing was held on May 25, 1945, with the members of the Commission presiding.

Following are the appearances at either or both of the hearings as above noted:

Charles E. Stege, Helmer Hansen, Chicago, and Carl A. Altenbern, Manager, Burlington, for Wisconsin Southern Gas Company.

Interveners in support of the application:

Hugh L. Burdick, City Attorney, Lake Geneva, for city of Lake Geneva; Arthur E. Hanson, Fontana, for village of Fontana; Emery F. Yaeger, Williams Bay, for Geneva Lake Property Owners' Association and Delavan Lake Improvement Association; William F. Corbett, Member of the Board of Trustees, Williams Bay, for Williams Bay; E. M. Rice, Delavan, for city of Delavan; Frederic Sammond, Attorney, Milwaukee, for Milwaukee Gas Light Company.

In opposition:

Philip H. Porter, Attorney, Madison, for Wisconsin Coal Bureau, Inc., and Wisconsin-Upper Michigan Fuel Dealers Association; A. J. Christiansen, Chicago, for Middle States Fuels, Inc.; A. R. McDonald, Madison, and Amos Mathews, Attorney, Chicago, for Wisconsin Railroad Association (Unincorporated); Harold V. Scott, Terre Haute, Indiana, and C. C. Lydick, Managing Director, Terre Haute, Indiana, for Coal Trade Association of Indiana; Padway & Goldberg, Attorneys, by Alfred G. Goldberg, Milwaukee, for Wisconsin State Federation of Labor, Associated Coke Plant Employees, Coal & Ice Drivers' Union Local 257, Coal Yard Employees' Union Local 239, Wisconsin Drivers' Council, Coal Dock Workers' Union Local 1343, Coal Dock Workers' Union Local 1481, Longshoremen's District Council of Superior and Duluth, and Lake Michigan District Council of Coal Dock Workers; Gardner R. Withrow, Madison, for Brotherhood of Railroad Trainmen, W. R. McCabe, Chairman of Brotherhood of Locomotive Firemen & Enginemen, and H. J. Ripp, Chairman of Brotherhood of Railway Clerks & Steamship Employees; Thomas J. McGrath, Washington, D. C., for National Coal Association, Southern Building, Washington, D. C., United Mine Workers of America, Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Switchmen's Union of North America, and Order of Railway Conductors; Howard W. Vesey, Washington, D. C., for Northern Illinois Coal Trade Association, Chicago, Illinois; Charles W. Stadell, Chicago, for Illinois Coal Traffic Bureau, Central Illinois District Coal and Traffic Bureau; R. H. Cowan, Chairman, Wisconsin Legislative Board, Adams, for Brotherhood of Locomotive Engineers; Frank Gloek, Superior, for Longshoremen's District Council of Duluth and Superior and Coal Dock Workers' Union of Superior; Walter Hohler, West Allis, for Associated Coke Plant Employees Coke and Gas Workers' Union 1845; M. J. Clancy, Milwaukee, for Solid Fuels Institute; W. H. Schmitt, Chicago, for International Brotherhood of Firemen & Oilers;

Frank White, Milwaukee, for Coal Dock Workers, and Lake Michigan District Dock Workers.

As their interests may develop:

Charles W. Babcock, First Assistant City Attorney, Milwaukee, for city of Milwaukee.

Of the Commission staff:

H. T. Ferguson, Chief Counsel, H. J. O'Leary, Chief, Rates and Research Department, and Warren Oakey of the Engineering Department.

Briefs were filed.

[1] Subsequent to the entry of the order of April 16, 1942, *supra*, the legislature enacted Chap 48 of the Laws of 1943 which created subsection (4a) of § 196.49, Wisconsin Statutes. This enactment provides in substance that no public utility shall construct or install facilities designed for the substitution of natural for manufactured gas in the service furnished by such utility to the public unless this Commission shall have found and certified that the general public interest and public convenience and necessity requires the same and the Commission has issued a certificate to that effect. The section further requires that in making its determination in this respect the Commission shall give due consideration to all matters affecting the public interest including the social and economic effects of the proposed substitution by reason of its effect upon employment, existing business and industries, railroads, and other transportation agencies and facilities, the state, any of its political subdivisions, or any of its citizens or residents thereof.

While it was urged that the enactment above referred to is not properly applicable to the construction or installation here involved, in view of the fact that what is now requested is merely an amendment of a certificate which was granted prior to the effective date of the enactment, we think that said § 196.49(4a) is applicable and that testimony relative to the matters directed to be considered by the Commission was properly offered and received. The Commission's decision in this case is made after and upon due consideration of all the evidence thus offered and received.

From the standpoint of the utility and the service which it furnishes to the public, the evidence furnishes no good reason why the certificate should not be amended to authorize the construction of a 4½-inch pipe line instead of a 3-inch pipe line. The difference in cost is comparatively trifling but the capacity of the larger pipe is more than twice that of the smaller pipe previously authorized. Accordingly, the considerations which prompted the grant of the certificate issued under date of April 16, 1942, *supra*, in this proceeding apply with even greater force to the construction and installation as now proposed.

Strenuous objection to the grant of any amendment to the existing certificate was voiced on behalf of the railroads operating in Wisconsin and of persons engaged in one way or another in the transportation, distribution, or handling of coal and other solid or liquid fuels. It would serve no useful purpose to summarize the testimony adduced in support of such objections. Some of it is highly technical. Suffice to say that evidence was

adduced by the objectors in support of two alleged facts:

1. That the supply of natural gas available to Natural Gas Pipeline Company of America is not sufficient to justify the proposed substitution of natural for manufactured gas by Wisconsin Southern Gas Company in the furnishing of its product and service to the public.

2. That the introduction of natural gas into Wisconsin tends to injure the business or lessen the employment of the objectors and thus is contrary to the public interest and cannot be required by public convenience and necessity.

While the supply of gas available to Natural Gas Pipeline Company of America is to some extent a matter of speculation, we are satisfied from the evidence that if Wisconsin Southern Gas Company can succeed in obtaining service from Natural Gas Pipeline Company of America, that service will continue in adequate volume for a period of considerably more than ten years. In view of the savings to Wisconsin Southern Gas Company which will result from a substitution of natural for manufactured gas, and which saving will in large part inure to the benefit of the public served by that utility, we are satisfied that such substitution is justified.

[2, 3] As far as the public interest and the other matters required to be considered under the provisions of § 196.49(4a), Statutes, are concerned, the evidence establishes to our satisfaction that nautral gas will be a cheaper and better fuel than any manufactured gas which Wisconsin Southern Gas Company could supply to its public. That fact alone is sufficient to justify a finding by this Commission that the substitution as proposed is in the general public interest and is required by public convenience and necessity; unless the benefits which the customers of a utility will receive as a result of such substitution are outweighed by the alleged disadvantages which the objectors claim will result from that substitution.

It is claimed, for example, that if natural gas is substituted for manufactured gas in the territory supplied by Wisconsin Southern Gas Company, shipments of coal by the Chicago and North Western Railway Company on its branch line between Genoa Junction and Lake Geneva and Williams Bay will so decrease in amount that this branch line may be abandoned and the two places named may be left without railroad service. Also, it is contended that employment and business of those engaged in the transportation, distribution, or handling of fuel will lessen and suffer by reason of the substitution of natural for manufactured gas by Wisconsin Southern Gas Company.

We think that the disadvantages thus alleged are shown to be merely fears rather than facts. While there may be some temporary disruption of business and employment as a result of the substitution of natural for manufactured gas by Wisconsin Southern Gas Company, this is merely one of the conditions under which all economic progress is attained. We are satisfied that the introduction of natural gas into the territory served by Wisconsin Southern Gas Company will tend to the economic benefit of all of the portion of the public which

resides within that territory. This eventually will redound to the interest not only of the railroads but likewise to the public generally even though it may result in the sale, distribution, or handling of less coal or other solid or liquid fuels.

We conclude, therefore, after due and full consideration of all matters affecting the public interest as required by § 196.49(4a), Statutes, that the substitution of natural for manufactured gas by Wisconsin Southern Gas Company in the service furnished by that utility to the public is required by the public interest and by public convenience and necessity.

The Commission therefore finds:

1. That the construction and installation by Wisconsin Southern Gas Company of a 4½-inch (outside diameter) welded steel pipe line between Lake Geneva and the state line to connect at the latter point with the facilities of the Natural Gas Pipeline Company of America, and the construction of terminal facilities by said Wisconsin Southern Gas Company in Lake Geneva as specified in the application herein, all at the estimated cost of $55,000, is required by public convenience and necessity; and that the completion of such project will not substantially impair the efficiency of the service of Wisconsin Southern Gas Company as a public utility, will not provide facilities unreasonably in excess of possible future requirements, and will not, when placed in operation, add to the cost of service without proportionately increasing the value or available quantity thereof.

2. That the construction, installation, and operation of such pipe line and terminal facilities and the substitution of natural gas for manufactured gas for distribution and sale to the public by said Wisconsin Southern Gas Company is required by the general public interest and public convenience and necessity.

3. That a certificate authorizing the construction and installation of the pipe line and terminal facilities above referred to should be issued subject to the conditions as therein set forth.

Certificate

It is therefore hereby certified:

1. That the general public interest and public convenience and necessity require the addition to the utility plant of Wisconsin Southern Gas Company of the pipe line and terminal facilities hereinafter specified for the purpose of connecting its properties and system to a source of supply for natural gas; and likewise require that said Wisconsin Southern Gas Company substitute natural gas in lieu of manufactured gas for distribution and sale to the public served by said utility.

2. That Wisconsin Southern Gas Company be and is hereby authorized to construct a 4½-inch (outside diameter) welded steel pipe line and the terminal facilities at Lake Geneva, Walworth county, described in the foregoing findings subject, however, to the following conditions, compliance of each of which is required in order to make this certificate effective for any purpose:

A. That the construction of said pipe line shall commence not later than six months subsequent to the grant by the Federal Power Commission to Natural Gas Pipeline Company of America of authority to furnish

natural gas to Wisconsin Southern Gas Company at and by means of the connection between the facilities of said Natural Gas Pipeline Company of America and Wisconsin Southern Gas Company at the state line near Genoa City, Walworth County.

B. That before commencing any such construction applicant shall file with and obtain the approval of this Commission of detailed plans for the terminal facilities proposed to be constructed at Lake Geneva, and also detailed plans or statement of the method and procedure proposed to be taken and employed for converting customer appliances so as to make the use of natural gas available thereby, together with detailed estimates, and bids where taken, with respect to any such construction or conversion or the expenditure connected therewith.

C. That upon completion of the contemplated work a detailed statement showing the actual costs of all principal units of property shall be submitted to this Commission.

D. That before commencing the construction of any property hereunder, applicant shall ascertain that Natural Gas Pipeline Company of America is or has been authorized and permitted by the proper agency of the government of the United States to furnish and supply applicant with sufficient quantities of natural gas, adequate to meet applicant's present and reasonably expected future requirements; and that applicant file with the Commission evidence of such permission or authority, together with contracts entered into with said Natural Gas Pipeline Company, which contract shall be subject to the approval of this Commission.

ORDER

It is *ordered:*

1. That upon the exercise of the authority granted in and by the foregoing certificate and compliance with the conditions thereof, or as may be hereafter prescribed, the applicant be and is hereby authorized to substitute natural gas for manufactured gas in the furnishing of its utility service; subject, however, to the proper and lawful regulation of the applicant as to standards and adequacy of service and the rates to be charged therefor.

2. That jurisdiction of the subject matter of this proceeding is retained for the purpose of passing upon the compliance by applicant with the conditions attached to the foregoing certificate, and upon the propriety and terms of any dismantlement of applicant's existing gas manufacturing plant or facilities; and also for the purpose of modifying the certificate of authority hereby issued as the Commission may deem proper.

Re Wisconsin Southern Gas Company

Opinion No. 118-A, Docket Nos. G-236, G-536
September 4, 1945; rehearing denied October 26, 1945

APPLICATION *by gas distributing company for order pursuant to § 7 of the Natural Gas Act directing pipe-line company to extend facilities, establish physical connection, and sell gas for distribution, and application for certificate of public convenience and necessity to construct gas transmission line; on rehearing application granted. For earlier order, see (1944) 56 PUR(NS) 65. For related cases before Wisconsin Commission, see (1942) 45 PUR(NS) 8, 11, and ante, p. 284.*

Monopoly and competition, § 3 — Substitution of natural gas for manufactured gas — Effect on other industries.

The public interest will best be served by substitution of natural gas for manufactured gas in the operations of a local gas utility seeking a connection with an interstate natural gas company, where this will provide customers with an assured source of supply, will assure maintenance and continuity of adequate service, and will result in lower rates to the benefit of the public and where the benefits to the public in the area to be served far outweigh potential losses asserted by representatives of coal, railroad, and labor interests who contend that this will result in displacement of coal.

APPEARANCES: Helmer Hansen and Charles E. Stege, for applicant, Wisconsin Southern Gas Company; Harry S. Littman and William L. Brunner, for Federal Power Commission; J. J. Hedrick, for Natural Gas Pipeline Company of America; Tom J. McGrath and James W. Haley, for National Coal Association; Tom J. McGrath and Welly K. Hopkins, for United Mine Workers of America; Tom J. McGrath, for Brotherhood of Locomotive Engineers, et al.; Amos M. Mathews and A. R. McDonald, for Wisconsin Railroad Association, et al.; Charles W. Babcock, for city of Milwaukee, Wisconsin; Philip H. Porter, for Wisconsin Coal Bureau, Inc., et al.; Martin H. Miller, for Brotherhood of Railroad Trainmen; Alfred Berman, of Guggenheimer & Untermyer, for Fred J. Young, et al.; Padway & Goldberg, by A. G. Goldberg, and James Glenn, for Associated Coke Plant Employees, et al.; Charles W. Stadell, for Illinois Coal Traffic Bureau; C. C. Lydick and Harold V. Scott, for Coal Trade Association of Indiana, et al.; Howard W. Vesey and A. J. Christiansen, for Northern Illinois Coal Trade Association, et al.; Amos M. Mathews and Roy S. Kern, for the Baltimore and Ohio Railroad Co., et al.; A. R. McDonald and Amos M. Mathews, for Wisconsin State

Legislative Board of the Order of Railway Conductors, et al.

By the COMMISSION: On November 27, 1944, we granted a rehearing on our order of October 3, 1944, 56 PUR(NS) 65, dismissing the applications of Wisconsin Southern Gas Company,[1] filed on February 24, 1942, in Docket No. G–236, and March 29, 1944, in Docket No. G–536.

The Applicant seeks in Docket No. G–236 an order pursuant to § 7(a) of the Natural Gas Act directing Natural Gas Pipeline Company of America [2] to extend its transportation facilities to establish connection of such facilities with those of Applicant at the Illinois-Wisconsin state line near Genoa City, Wisconsin, and to sell natural gas to applicant for distribution in southeastern Wisconsin.

The application in Docket No. G–536 is for a certificate of public convenience and necessity pursuant to § 7(e) of the act to authorize Applicant to construct and operate a 4½-inch outside diameter natural gas transmission main extending northward from such connection for a distance of 50,000 feet to Applicant's existing facilities at Lake Geneva, Wisconsin, together with the necessary appurtenant facilities.

The proceedings in Docket Nos. G–236 and G–536 were consolidated by order of April 18, 1944, and, after appropriate notice, hearings were held commencing on May 11, 1944, and concluding on May 15, 1944, followed by oral argument on July 12, 1944, before the Commission sitting en banc.

By our order of November 27, 1944, after appropriate notice, a further hearing with respect to the above matters was duly convened on January 18, 1945, and concluded on the same day.

The Applicant is engaged in the manufacture of gas and its transportation and distribution to consumers in a number of municipalities in Racine and Walworth counties in Wisconsin, including Burlington, Lake Geneva, Delavan, and Elkhorn.[3] Applicant seeks to substitute natural gas for manufactured gas now being served to its consumers in the aforementioned communities.

In our Opinion No. 118 and accompanying order of October 3, 1944, (cited below) dismissing the applications with respect to the above docketed matters, we found upon the evidence then before us that:

". . . the record clearly shows that the city of Burlington has not authorized the proposed change-over from artificial to natural gas. More than one-fourth of Applicant's customers are located in that city—the largest of the communities served by it. Although authorizations have been granted by certain other communities, it is evident from the record that the proposed project would not be undertaken if the market in Burlington is unavailable,"

and concluded that:

"In the light of the foregoing circumstances, should we find that it is desirable or necessary to 'direct' the extension and physical connection of

[1] Hereinafter referred to as "Wisconsin Southern" or "Applicant."

[2] Hereinafter referred to as "Pipeline Company."

[3] Opinion No. 118 adopted October 3, 1944, 56 PUR(NS) 65.

facilities requested by Applicant? We think not. Obviously we cannot compel local distribution of natural gas. State and local authorities have responsibility over such aspects of the company's business. . . .

"In the circumstances, we think it is inappropriate to find that the action which we are requested to take pursuant to § 7(a) is 'necessary or desirable in the public interest.' In view of this conclusion, it would appear unnecessary to discuss the other aspects of these proceedings." (56 PUR (NS) at pp. 68, 69.)

During the course of the rehearing evidence was adduced to the effect that the council of the city of Burlington, Wisconsin, had authorized the substitution of natural gas for manufactured gas in that city by ordinance adopted October 30, 1944, whereby the Applicant, or its successors or assignees, was permitted to substitute natural gas in lieu of manufactured gas for distribution and sale in that city.[4]

Additional evidence was also presented bearing upon Wisconsin Southern Gas Company's application filed January 9, 1945, for a modification of its certificate of authority issued by the Wisconsin Public Service Commission on April 16, 1942, 45 PUR(NS) 8, 11. The original certificate of authority, issued by the Wisconsin Commission, authorized the construction by Applicant of 10 miles of a 3-inch outside diameter pipe line to connect its facilities at Lake Geneva with those of Pipeline Company at the Illinois-Wisconsin state line at a point near Genoa City, together with terminal facilities at Lake Geneva, and permitted the substitution of natural gas for manufactured gas.[5]

Wisconsin Southern, by its application of January 9, 1945, to the Public Service Commission of Wisconsin for modification of its certificate of April 16, 1942, sought authorization to construct and operate a 4½-inch outside diameter pipe line in lieu of the 3-inch pipe line. By such application Applicant also requested a determination by the Wisconsin Commission as to whether or not the amendatory § 196.49(4a) of the Wisconsin Public Utilities Act, effective April 17, 1943, was applicable with respect to its certificate of authority of April 16, 1942.[6]

Since the termination of the hearing before this Commission, the Wisconsin Commission has had occasion to pass upon the above question and modification of Applicant's original

[4] Section 196.58 (6): "No public utility furnishing and selling gaseous fuel to the public shall change the character or kind of such fuel by substituting for manufactured gas any natural gas or any mixture of natural and manufactured gas for distribution and sale in any town, village or city unless the municipal council thereof shall, by authorization, passage, or adoption of appropriate contract, ordinance, or resolution, approve and authorize the same. No such contract, ordinance or resolution, nor any failure or refusal by such municipal council to authorize, pass, or adopt the same shall be subject to the review provided by subsection (4) of this section."

[5] Re Wisconsin Southern Gas Co. (1942) 45 PUR(NS) 8, 11.

[6] Section 196.49(4a) provides in part that the municipal council shall have first approved and authorized such substitution, pursuant to § 196.58 (6) before a certificate of public convenience and necessity may be issued therefor by the Wisconsin Commission, and that in determining whether a certificate should be issued due consideration is to be given to the social and economic effects of the proposed substitution upon employment, existing business and industries, railroads, and other transportation agencies and facilities, the state, any of its political subdivisions, or any citizen or resident thereof.

certificate of authority of April 16, 1942. The Wisconsin Commission concluded that Applicant's request to amend its certificate of authority was subject to the amendatory section. That Commission, after due and full consideration of all matters affecting the public interest as required by said section, further concluded that the substitution of natural gas for manufactured gas by Wisconsin Southern in the service furnished by Wisconsin Southern to the public is required by public interest and by public convenience and necessity.[7]

Applicant now has both local and state authorization to substitute natural gas in lieu of manufactured gas in the various communities which it now serves in the state of Wisconsin, in conformance with the Wisconsin Public Utilities Act. It is therefore appropriate that we consider the issues presented by reason of the applications filed pursuant to § 7 of the act, and reconsider our previous action.

Jurisdiction

In our former opinion we found that the evidence clearly established the jurisdiction of the Commission to entertain the applications; that the Pipeline Company is a "natural-gas company" within the meaning of the Natural Gas Act, and that Applicant, upon completion and operation of the proposed facilities, would be a "natural-gas company" within the meaning of the act. What we said there with respect to our jurisdiction is equally applicable here, and needs no reiteration.

Present Operations

Applicant, from its gas manufacturing plant located in Burlington, serves approximately 4,000 gas customers in Walworth and Racine counties, Wisconsin, with 530 BTU carbureted water gas. The area served is essentially an agricultural and summer resort region.

The record before us conclusively shows that Applicant's manufactured-gas plant is inadequate and undependable to meet its present and future system requirements. Its existing plant could be put into satisfactory operating condition at a cost of $48,000, and additional manufacturing gas facilities of adequate capacity could be installed for approximately $142,600. On the other hand, such expenditures do not appear to be economically feasible due to the fact that Applicant's average annual return on a claimed rate base in recent years has approximated only 2 per cent. The inadequacy of its present plant and cost of rehabilitation are among the aspects emphasizing the need for substitution of natural gas in lieu of manufactured gas in order that Applicant may continue to maintain adequate gas service in the communities which it now serves.

Proposed Operations

Applicant proposes to discontinue the manufacture of water gas and convert its system to use straight natural gas[8] after completion of the connection with Pipeline Company at the Illinois-Wisconsin state line and the Applicant's 4½-inch line. The esti-

[7] Opinion of the Public Service Commission of Wisconsin adopted July 17, 1945, *ante*, p. 284.

[8] The introduction of natural gas would substitute gas having a heating value of 1040 BTU per cubic foot in lieu of the present 530 BTU manufactured gas.

mated cost of the pipeline and appurtenances to be constructed by Applicant is $55,000, to be financed from cash on hand.[9] The estimated cost of converting its customer's appliances is $24,000.

Pipeline Company will be required to construct approximately 6,000 feet of 3½-inch and 4½-inch pipe line extending from a point on its 20-inch line near Richmond, Illinois, to the proposed connection with Applicant on the Illinois-Wisconsin state boundary and in addition complete two railroad crossings on the above-mentioned 20-inch line. It is estimated that such construction will cost Pipeline Company $20,622.

The Pipeline Company has expressed its willingness to make the proposed interconnection with Applicant's facilities, if directed to do so by order of the Commission, and to sell to Applicant its entire natural gas requirements at rates currently on file with the Commission.

One of the reasons urged by Applicant for the granting of the application is that costs of operation and rates would be reduced as a result of the introduction of natural gas. Applicant's manufactured gas production expense in 1943 was $85,265, or 51½ cents per thousand cubic feet of 530 BTU gas. The record discloses that an equivalent volume of natural gas could be obtained from the Pipeline Company under its existing wholesale rate schedule for firm gas for $12,170 (14 cents per thousand cubic feet), a saving of approximately $73,000. The reduced rates which Applicant proposes to charge for natural gas would result in a saving to customers of $38,438 [10] per year based on 1943 sales, after payment of the state natural gas use tax of 7 cents per thousand cubic feet. A large part of such saving would inure to residential consumers from whom Applicant receives approximately three-fourths of its total revenues.

It is noted that the Applicant has informally submitted to the Wisconsin Commission proposed reduced rates for natural gas service in lieu of its existing rates.

Reserves-Ability of Pipeline Company to Supply Natural Gas

Applicant proposes to obtain its natural gas supply from the Pipeline Company, which company obtains 75 per cent of its gas supply from its affiliate, Texoma Natural Gas Company, and 25 per cent from Colorado Interstate Gas Company, both of which secure their natural gas supply from the Panhandle field in Texas.

The following tabulation shows Applicant's estimated annual and peak day natural gas requirements from the Pipeline Company upon the construction and operation of the proposed facilities.

[9] In 1942 Applicant sold $50,000 of common stock to its parent company, American Utilities Service Corporation, which sum is available to finance the construction.

[10] Before use tax, the saving would be $43,618.

	Present Needs [11]	Post War Period 1st Year	2nd Year	3rd Year	4th Year	5th Year
Peak Day Requirements M cu. ft./Day	345	400	522	647	788	857
Total Gas Purchased M cu. ft./Year	87,500	105,000	138,000	172,500	212,000	238,000
Gas Sales M cu. ft./Year	72,500	89,500	121,500	155,000	194,500	220,500
Company Use M cu. ft./Year	1,500	1,500	1,500	1,500	1,500	1,500
Unaccounted for	13,500	14,000	15,000	16,000	16,000	16,000
Total	87,500	105,000	138,000	172,500	212,000	238,000

We are convinced that Pipeline Company through its affiliate Texoma Natural Gas Company and Colorado Interstate Gas Company has sufficient reserves to supply the natural gas requirements of the Applicant for many years, and that such delivery will not materially affect the life of Pipeline Company's available reserves because the quantity is comparatively small as related to its total reserves.

The record shows that the delivery of Applicant's peak day requirements which are less than one-half of one per cent of the total rated capacity of Pipeline Company's transmission system, will place no undue burden on that company, nor impair its ability to render adequate service to its customers.[12]

Public Convenience and Necessity

Interveners, representing coal, railroad, and labor interests, oppose the granting of the applications in these proceedings and contend that such action will result in the displacement of coal, thereby affecting their interests. However, we have carefully examined the record and find that the benefits to the public in the area to be served far outweigh the potential losses asserted by the interveners, which at best are highly conjectural.

Moreover, the communities of Burlington and Brown's Lake in Racine county, and Lyons, Springfield, Lake Geneva, Elkhorn, Delavan, Delavan Lake, Darien, Williams Bay, Fontana, and Walworth, all in Walworth county, have expressed their desire for natural gas service, and have authorized its substitution in lieu of manufactured gas.

The Public Service Commission of Wisconsin, in its opinion of July 17, 1945, *ante*, p. 285, expressed itself with respect to the substitution of natural gas in lieu of manufactured gas as it affects the public interest of the communities referred to as follows:

"We are satisfied that the introduction of natural gas into the territory served by Wisconsin Southern Gas Company will tend to the economic benefit of all of the portion of the public which resided within that territory. This eventually will redound to the interest not only of the railroads but likewise to the public generally even though it may result in the sale, distribution, or handling of less coal or other solid or liquid fuels."

The Wisconsin Commission, in making this declaration, stated that it had given consideration to all of the evidence with respect to the social and economic effects of the proposed sub-

[11] The estimated present needs are the 1943 manufactured gas requirements reduced in the ratio of the heating value of manufactured gas to the heating value of natural gas.

[12] Rated capacity of Pipeline Company, 265,000 thousand cubic feet per day.

stitution upon employment, existing business and industries, railroads, and other transportation agencies and facilities.

The introduction of natural gas as proposed by the Applicant will provide the people of Southeastern Wisconsin with an assured source of supply and will insure the maintenance and continuity of adequate gas service. Additionally, it will also result in lower rates to the benefit of the general public. We conclude that the public interest will be best served by the substitution of natural gas for manufactured gas.

Conclusion

After carefully weighing the testimony and other evidentiary matter, we are constrained to hold that the public interest requires that the Natural Gas Pipeline Company of America be directed to extend its transportation facilities and establish a physical connection of such facilities with those proposed by the Wisconsin Southern Gas Company, and deliver and sell natural gas to Applicant for distribution in those communities in southeastern Wisconsin in which it has been authorized to sell natural gas.

In this connection it is noted that Pipeline Company's 20-inch line above referred to, extending from a point beginning at its Geneseo compressor station northward for approximately 29 miles to a point just southwest of the Illinois-Wisconsin state line near Burlington, Wisconsin, was in place but not in operation on February 7, 1942. Therefore, the construction and operation of such pipe-line facilities was not validated by our certificate of public convenience and necessity issued on October 13, 1942, in Re Natural Gas Pipeline Co. Docket No. G–235.

Our action in this matter is not to be construed as validating the operation of the said 20-inch line except as required to make the deliveries ordered herein or as may otherwise be specifically authorized by order of this Commission, nor shall it be interpreted as approving the operation of such line in accordance with the proposal of Pipeline Company in Re Natural Gas Pipeline Co. and Texoma Nat. Gas Co. Docket No. G–651.

We further find that the proposed construction and transportation of natural gas by Wisconsin Southern Gas Company will be required by the present and future public convenience and necessity. Wisconsin Southern has shown that it is able and willing properly to do the acts and perform the service proposed and to conform to the provisions of the act and the requirements, rules and regulations thereunder.

An appropriate order will be entered in conformity with this opinion.

ORDER

Upon consideration of the applications in the above-entitled proceedings and the record thereon, the Commission having on this date adopted its Opinion No. 118–A, which is hereby made a part hereof by reference;

The Commission finds that:

(1) Natural Gas Pipeline Company of America is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found in Re Natural Gas Pipeline Co. Docket No. G–235.

(2) It is desirable and in the public interest that Natural Gas Pipeline Company of America extend its transportation facilities subject to the jurisdiction of this Commission and establish physical connection of such facilities with the proposed facilities of the Wisconsin Southern Gas Company (Applicant) for the purpose of delivering and selling natural gas to Applicant by: (i) completion of the construction of its 20-inch pipe line, extending from a point at its compressor station at Geneseo, Illinois, approximately 29 miles in a generally northward direction to a point southwest of the Illinois-Wisconsin state line near Burlington, Wisconsin, by installing the necessary crossings under two railroads in McHenry county, Illinois; and (ii) construction of approximately 6,000 feet of 3½-inch O. D. and 4½-inch O. D. gas pipeline and appurtenant facilities to extend from a point on its 20-inch pipe line near Richmond, Illinois, in a northerly direction in McHenry county to a point at or near the Illinois-Wisconsin state line.

(3) The construction and operation of the facilities referred to in paragraph (2) above and the proposed delivery of natural gas to supply the requirements of the Applicant will not place any undue burden upon Natural Gas Pipeline Company of America, and will not impair its ability to render adequate service to its customers.

(4) Natural Gas Pipeline Company of America has expressed its willingness to construct and operate the necessary facilities in order to effect the delivery of natural gas to Applicant.

(5) The proposed construction and operation by Applicant of the facilities described in its application (Docket No. G–536) and supplements thereto are and will be required by the present and future public convenience and necessity, and a certificate authorizing the proposed construction and operation should be issued as hereinafter ordered and conditioned.

(6) Applicant, upon completion and operation of the facilities referred to in paragraph (5) above, will be a "natural-gas company" within the meaning of the Natural Gas Act.

(7) Applicant is able and willing properly to do the acts and perform the service proposed and to conform to the provisions of the Natural Gas Act, as amended, and the rules, requirements and regulations of the Commission thereunder.

The Commission *orders* that:

(A) A certificate of public convenience and necessity be and it is hereby issued authorizing Wisconsin Southern Gas Company to construct the proposed facilities described in its application and exhibits appended thereto, and to operate its present and proposed facilities, subject to the jurisdiction of the Commission, for the transportation of natural gas, as described in said application, upon the terms and conditions of this order.

(B) Natural Gas Pipeline Company of America shall extend its transportation facilities subject to the jurisdiction of this Commission to establish physical connection of such facilities with the proposed facilities of Wisconsin Southern Gas Company, and shall deliver and sell to Applicant, by means of the facilities referred to in paragraph (2) above, natural gas required for service to Applicant's ul-

timate consumers in the communities in which it is now authorized to sell natural gas in Racine and Walworth counties, Wisconsin.

(C) Our action in this matter shall not be construed as validating the operation of the said 20-inch line except as required to make the deliveries ordered herein or as may otherwise be specifically authorized by order of this Commission.

(D) The certificate hereby issued shall not be transferable and is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, contracts, service, accounts, valuation, estimate, or determination of cost, or any other matter whatsoever now pending or which may come before this Commission or other regulatory body, and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

(E) Nothing herein is to be construed as affecting in any manner the determination of the service area of either Wisconsin Southern or Natural Gas Pipe Line or of any other natural gas company under § 7(f) of the Natural Gas Act, 15 USCA § 717f (f).

(F) The certificate hereby issued shall be effective as long as Applicant continues the operations hereby authorized in accordance with the provisions of the Natural Gas Act and any pertinent rules, regulations, or orders heretofore or hereafter issued by the Commission.

(G) Appropriate evidence of the issuance of this certificate shall be furnished to Applicant.

WISCONSIN PUBLIC SERVICE COMMISSION

La Vern J. Klinger et al.

v.

Wisconsin Telephone Company

2-U-2038
July 2, 1945; rehearing granted August 8, 1945

COMPLAINTS *against refusal of telephone company to extend exchange service; extension ordered. For decision rescinding order to extend service, see post, p. 303.*

Service, § 132 — Duty to serve — Overlapping areas — Telephones.

1. The lawful undertaking of a telephone utility may include town areas which overlap the area in which another utility has an undertaking to furnish similar service, p. 301.

Service, § 132 — Duty to serve — Other available service.

2. The fact that one telephone company is willing to furnish service to a person seeking service from another company in an overlapping area is not sufficient to justify a finding by the Commission that the undertaking of the second company does not include the rendition of service to such person, p. 301.

Service, § 209 — Telephone extension — Overlapping area.

3. The undertaking of a telephone company includes service to a resident in an area where another telephone utility may also furnish service where the first company can render service from an exchange in the same town in which the applicant resides, its facilities are within ¾ mile of the applicant's residence, the applicant resides in a portion of the area which may be said to have a social and economic community of interest centering in the city where such exchange is located, and the rates of this company include a mileage charge indicating a willingness of the company to render its service to anyone whose residence is not more than 8 miles from the central office, p. 301.

By the COMMISSION: On March 10, 1945, La Vern J. Klinger and Oscar Dornfeld, Route 1, Watertown, Jefferson county, complained to the Commission that the Wisconsin Telephone Company would not extend Watertown exchange service to their farms located in section 36, town of Lowell, Dodge county. Subsequently, on March 24, 1945, Wisconsin Telephone Company notified the Commission that the complainants were within the normal service area of the Clyman exchange of the Mid-West States Telephone Company, and that such utility was willing and able to furnish Clyman exchange service. Notice of investigation was issued April 9, 1945.

APPEARANCES:

Petitioners: Oscar Dornfeld and La Vern J. Klinger, Route 1, Watertown; Wisconsin Telephone Company by Wm. E. McGavick, Attorney, L. J. Fitzgerald, Commercial Engineer, F. W. Newbauer, Local Manager.

As their interests may appear: Mid-West States Telephone Company, by Arthur A. Krueger, General Plant Superintendent, Rockford, Illinois.

The evidence shows that Dornfeld and Klinger operate farms located along an east-west town road in the southern quarter of section 36, town of Lowell, Dodge county. The farms are about ¾ of a mile apart; Dornfeld's farm is in the southeast quarter, Klinger's in the southwest quarter. To furnish complainants with its service, Wisconsin Telephone Company would have to extend its pole line about ¾ of a mile to serve Dornfeld and an additional ¾ mile to serve Klinger. To furnish its service to complainants Mid-West States Telephone Company would have to extend its pole line an over-all distance of between 3½ and 4 miles. Watertown is about 7½ miles from the vicinity; Clyman about 3½ miles. Monthly net rates for Watertown exchange service would be $2.50 and for Clyman exchange service $1.25.

Dornfeld testified that he has occupied his farm for about a year and that prior thereto it was rented. He

has all of his business and social connections in Watertown and at present has a very urgent need for Watertown service to enable him to obtain assistance in operating the farm. He exchanges work with neighbors who have Watertown service and is acquainted with several people in Watertown who can help him with farm work for a day at a time. He would get along without a telephone rather than have Clyman exchange service.

Klinger testified that he has spent all his life on the farm that he occupies and is operating it for his father. His family has been trying to obtain telephone service from Watertown for twenty years. His situation is similar to Dornfeld's, practically all of his business and social connections are in Watertown, he exchanges work with neighbors who have Watertown service, and in addition, his wife teaches school in Watertown.

[1–3] The Commission is thus confronted in this case with a complaint that a telephone utility, operating in the town in which the complainants reside, has refused to furnish service which the complainants demand. Such denial of service is not sought to be justified upon the specifically stated ground that the utility's undertaking of service does not include service within the area in which the complainants reside. However, this may have been the intended effect of the ground for such refusal as stated, viz., that the territory in which complainants reside is within the undertaking of another utility which is also operating in the town where complainants reside.

The Commission is not aware of any facts or of any statutes or principles of law which operate to create areas in the towns of this state in which any telephone utility has an exclusive privilege of furnishing its service to the public. The lawful undertaking of one telephone utility may include town areas which overlap the area in which another utility has an undertaking to furnish similar service. And, under such circumstances, both utilities may possibly have not only an undertaking but an obligation to render their service to the same person.

Accordingly, the fact that Mid-West States Telephone Company is willing to furnish its telephone utility service to the complainants in this case is not sufficient to justify a finding by the Commission that the undertaking of Wisconsin Telephone Company does not include the rendition of service to such complainants. As a matter of fact, the Commission thinks the undertaking of Wisconsin Telephone Company does include that service.

The Commission is of the opinion that this conclusion is justified primarily by the fact of the rendition of service by Wisconsin Telephone Company from its Watertown exchange in the same town in which complainants reside; from the further fact that the facilities of Wisconsin Telephone Company are within ¾ mile of the complainants' residence; that these complainants reside in a portion of the area which may be said to have a social and economic community of interest centering in the city of Watertown; and from the additional fact that the rates of Wisconsin Telephone Company as filed with this Commission, and applicable to the service furnished through that company's Wa-

tertown exchange, include an additional charge for service of 25 cents per mile per month for each subscriber located beyond a 6-mile air-line distance from the central office of the exchange in Watertown. This rate clearly indicates a willingness of Wisconsin Telephone Company to render its service to anyone whose residence is not more than 8 miles from such central office.

If the service requested by the complainants is within the undertaking of Wisconsin Telephone Company from its Watertown exchange, there would seem to be no escape from the company's obligation to furnish that service unless the evidence is sufficient to show that such service is not within the requirements of reasonably adequate service or is, for some reason, contrary to the public interest.

The Commission sees no support in the evidence for any conclusion that furnishing of the service here involved is not within the requirements or limitations of reasonably adequate service. Nor does it think the furnishing of such service is contrary to the public interest.

It may be true that the area in which complainants reside is nearer Clyman, where the central office of the Mid-West Company's exchange is located, than it is to Watertown, but this fact is not sufficient to relegate such area to the exclusive service of the Clyman exchange. It may also be true that there are other areas which are only a little farther away from Watertown than the areas here involved and in which persons reside who may see fit to demand service from Wisconsin Telephone Company if they learn that complainants have it. Whether the service to such persons is or would be within Wisconsin Telephone Company's undertaking of service is a question which we need not and do not decide in this proceeding. Whether any particular service which is requested of a utility is within its undertaking is not essentially a question of law but a question of fact to be decided upon the evidence presented with respect to that particular service.

It is also true that unnecessary duplication of telephone utility service is contrary to the public interest and no utility should be required to furnish service that would constitute or tend to create any such unnecessary duplication. In this case, however, the rendition of the requested service would not duplicate any existing service. All that would result from such rendition would be the probability that an extension of the Mid-West's facilities and service into the area in which complainants reside would be an unnecessary duplication of existing service. But, in the absence of any privilege in Mid-West constituting an exclusive right to render service in the town, that probability would not justify this Commission in denying to complainants the enforcement of their right to any service which Wisconsin Telephone Company is obligated to furnish to them. There is no such privilege.

Findings

The Commission finds:

1. That the undertaking of service of Wisconsin Telephone Company by and through the exchange of said company at Watertown, Jefferson county, includes the service requested by the

complainants, La Vern J. Klinger and Oscar Dornfeld, residing in section 36, town of Lowell, Dodge county.

2. That the furnishing of such service to said complainants is within the requirements of reasonably adequate service by said Wisconsin Telephone Company.

3. That the rendition of the service requested by said complainants is consistent with the public interest.

ORDER

It is therefore *ordered:*

That the Wisconsin Telephone Company be and is hereby directed to extend its line from its Watertown exchange to serve La Vern J. Klinger and Oscar Dornfeld in section 36, town of Lowell, Dodge county.

WISCONSIN PUBLIC SERVICE COMMISSION

La Vern J. Klinger et al.

v.

Wisconsin Telephone Company

2-U-2038
October 4, 1945

COMPLAINTS *against refusal of telephone company to extend exchange service; on rehearing order requiring extension rescinded and proceeding dismissed. For original decision, see ante, p. 299.*

Service, § 52 — Powers of Commission — Extensions — Service obligations.

1. Power of the Commission to require a telephone utility to render service in an unincorporated area from any particular exchange which it may own or operate depends upon the question whether there is a legal obligation to render that service, and the Commission cannot create that legal obligation if it does not exist under pertinent facts and circumstances, p. 304.

Service, § 121 — Duty to serve — Public convenience and necessity.

2. Any obligation of a telephone utility to serve must rest primarily upon a voluntary undertaking, and if that undertaking does not include the requested service the utility cannot be required to furnish it, no matter how much it might be said to be required by public convenience and necessity, p. 304.

Service, § 209 — Telephone extension — Town not formerly served.

3. A telephone company cannot be required to extend service to applicants in a town in which the company does not render, and never has rendered,

any telephone utility service and for which the company holds no certificate of convenience and necessity, p. 304.

By the COMMISSION: Under date of August 8, 1945, a rehearing was granted with respect to the matters determined by the order entered in the above-entitled proceeding under date of July 2, 1945, ante, p. 299, directing Wisconsin Telephone Company to extend service from its Watertown exchange to La Vern J. Klinger and Oscar Dornfeld in the town of Lowell, Dodge county.

Rehearing: August 24, 1945, at Madison before Examiner Helmar A. Lewis.

APPEARANCES: Francis J. Hart, Attorney, and L. J. Fitzgerald, Commercial Engineer, for Wisconsin Telephone Company; Arthur A. Krueger, General Plant Superintendent, Rockford, Illinois, for Mid-West States Telephone Company; Oscar Dornfeld, Watertown, and La Vern Klinger, Watertown, as their interests may appear; H. T. Ferguson, Chief Counsel, Henry J. O'Leary, Chief, Rates, and Research Department, and Kenneth Jackson, Rates and Research Department, of the Commission staff.

It is contended on behalf of Wisconsin Telephone Company in this proceeding that the order of July 2, 1945, *supra,* herein is unreasonable or unlawful, or both, because the order as made is not supported by a finding that the service to Klinger and Dornfeld is required by public convenience and necessity. The position of Wisconsin Telephone Company, as we understand it, is that the evidence in this case is not sufficient to support such finding of public convenience and necessity.

Mid-West States Telephone Company also contends that the order is unreasonable or unlawful, or both, because, as it claims, the residences of Klinger and Dornfeld are within the territory or area that belongs to Mid-West States Telephone Company.

[1] We can discover no invalidity in the order of July 2, 1945, by reason of any of the claims or contentions as above indicated. Whether this Commission shall require a telephone utility to render service in an unincorporated area from any particular exchange which it may own or operate must depend upon a decision of the question of whether there is a legal obligation to render that service. The Commission cannot create that legal obligation if it does not exist under pertinent facts and circumstances.

[2, 3] Any such obligation must rest primarily upon a voluntary undertaking of the utility whose service is desired. If that undertaking does not include the requested service, the utility cannot be required to furnish it, no matter how much it might be said to be required by public convenience and necessity. This we understand to be the law as laid down not only by the supreme court of this state in Milwaukee v. Public Service Commission (1942) 241 Wis 249, 46 PUR(NS) 287, 5 NW2d 800, but by the Supreme Court of the United States in Interstate Commerce Commission v. Oregon-Washington R. & Nav. Co. (1933) 288 US 14, 77 L ed 588, 53 S Ct 266.

It is true that in the past this Commission has required various telephone utilities to furnish service which those utilities had previously refused to furnish and has based those orders upon findings that the requested service was required by public convenience and necessity. Many of those orders were made prior to the decision of our supreme court in South Shore Utility Co. v. Railroad Commission, 207 Wis 95, PUR 1932B 465, 240 NW 784, in which it was held that the towns of this state were without power to grant the kind of license, permit, or franchise which constitutes an indeterminate permit. Previous to that decision it was assumed that telephone utilities were operating in the towns of this state under indeterminate permits; and upon that premise it was concluded that the obligation of a telephone utility, operating in any town, was coextensive with the boundaries of that town in so far as their service was required by public convenience and necessity. That position was obviously no more sound than the premise upon which it rested.

We are satisfied, therefore, that the requirements of public convenience and necessity do not furnish the essential criteria for a determination by this Commission of the issues in this proceeding.

This proceeding was instituted under the provisions of § 196.29, Statutes, on motion of the Commission and the issues must be found therein and in § 196.26, Statutes, to which it refers. There is no mention in these sections of the phrase "public convenience and necessity." Section 196.50(2) which does require a finding of public convenience and necessity in passing upon a proposed voluntary extension of service objected to by a competing company has no application to this proceeding.

Nor do we subscribe to the position of Mid-West States Telephone Company in this proceeding. It is certainly not competent for the various telephone utilities of this state to enter into agreements which have the legal force and effect which indeterminate permits in towns would have if there were any power to create them. Just as certainly, the restrictions upon voluntary extensions of telephone utility services and facilities do not operate to create any exclusive privilege in any telephone utility with respect to its service in any town of this state. Moreover, the restrictions upon voluntary extensions, as contained in § 196.50(2), cannot operate to absolve any utility from its obligation of service, except as the Commission may find that the performance of service voluntarily undertaken is contrary to the requirements of public convenience and necessity.

The foregoing would result in an affirmance of the order of July 2, 1945, ante, p. 299, in this proceeding were it not for further evidence which was introduced by Wisconsin Telephone Company upon rehearing. This evidence is clear and conclusive of the fact that Wisconsin Telephone Company does not render and never has rendered any telephone utility service in the town of Lowell, Dodge county. This evidence belies the statement in the order of July 2, 1945, to the effect that Wisconsin Telephone Company was then furnishing

and theretofore had furnished service in said town of Lowell.

Wisconsin Telephone Company could not now furnish service to Klinger and Dornfeld in the town of Lowell without applying for and receiving from this Commission a certificate authorizing it to transact telephone utility business in said town of Lowell as required by § 196.49(1). Wisconsin Telephone Company has neither asked for nor received any such certificate of authority.

Under such circumstances we do not believe that our finding to the effect that the undertaking of service of Wisconsin Telephone Company includes the service requested by Klinger and Dornfeld can be sustained. If that finding is not sustained by evidence, the order should be rescinded. Accordingly, the order herein will rescind the order of July 2, 1945, and dismiss the complaint upon which this proceeding was instituted.

The Commission finds:

That the undertaking of service of Wisconsin Telephone Company does not include the service in the town of Lowell, Dodge county, requested by Klinger and Dornfeld.

The Commission concludes:

That the order of July 2, 1945, in this proceeding is unlawful and should be rescinded and that the proceeding herein should be dismissed.

RHODE ISLAND SUPREME COURT

Albert Capaldo

v.

Public Utility Hearing Board

No. 804
— RI —, 43 A2d 695
July 25, 1945

APPEAL *from order denying authority to operate taxicabs in certain cities; appeal denied and dismissed, and decision sustained.*

Appeal and review, § 32 — Conclusiveness of Board's findings — Basis for findings.

1. The Board's general and special findings should be considered as prima facie true and are not to be reversed unless they are unlawful, unreasonable, or against the weight of evidence, but findings based on matters not in evidence or upon considerations that are not proper under law for the Board's determination are not entitled to such weight, p. 309.

Certificates of convenience and necessity, § 168 — Denial of certificate — Matters to be shown.

2. An established policy of the Public Utility Administrator to issue no

more certificates for taxicab operation because of the previous issuance of many certificates to a particular taxicab company should be shown by evidence at a hearing before the Public Utility Hearing Board, if otherwise proper for consideration, because such hearing is de novo, p. 309.

Certificates of convenience and necessity, § 88 — Grant or denial — Guiding policy.

3. Any policy, properly established by the Public Utility Administrator to assist him in discharging his duties under the law relating to certificates, must be reasonably related to and be determined by what is conducive to the general public convenience, interest, welfare, and protection, and a policy otherwise framed would not become the controlling standard by which to determine whether or not general public convenience and necessity requires the issuance of certificates to operate taxicabs, p. 309.

Certificates of convenience and necessity, § 88 — Reasonableness of guiding policy.

4. A policy to guide the Public Utility Administrator in granting or denying certificates, based solely upon the mere issuance, without need, of certificates for taxicabs that were never registered and operated in the public service, is not reasonable and cannot be substituted for the standard provided by law, namely, public service, p. 310.

Monopoly and competition, § 75 — Taxicab competition — Consideration of ability of existing carrier to serve.

5. The Board, in passing upon an application for authority to operate taxicabs in a city, properly considered the fact that an existing cab company had several certified and registered taxicabs which were inactive because of an order of the Office of Defense Transportation, but which were presently available for public service if ordered into operation by the Public Utility Administrator, p. 310.

(CONDON, J., dissents.)

APPEARANCES: William Gerstenblatt, of Providence, for complainant; William C. Waring, Jr., James E. Flannery, and Edwards & Angell, all of Providence, for Yellow Cab Company; John H. Nolan, Attorney General, and A. Norman LaSalle, Assistant Attorney General, for the state.

FLYNN, CJ.: This cause is before us again on an appeal, in accordance with Public Laws 1940, Chap 821, § 1, from a decision of the public utility hearing board denying petitioner's application for a certificate of public necessity and convenience to operate three taxicabs for transportation of passengers within the city of Providence. In our earlier opinion it was remanded to the board for completion and clarification of its decision. Capaldo v. Public Utility Hearing Board (1944) 70 RI 356, 38 A2d 649. Thereafter a supplementary decision was filed and on the motion of the petitioner the matter was reargued.

The evidence presented in support of the application comprised petitioner's own testimony and that of an operator of one of his cars and two patrons thereof, an independent taxicab owner, two policemen, an operator of another public service car, a traffic expert on trucks, and the district manager of the Federal office of defense transportation for Providence.

Petitioner was the owner of three

public service cars for which he held public or "P" plates, so called, issued by the motor vehicle department. Such cars may be operated from private stands but may not lawfully pick up or solicit passengers indiscriminately on the highways. On the other hand, certificates to operate taxicabs are issued and regulated by the public utility administrator and are legally permitted to have stands, and to pick up and solicit passengers indiscriminately on the public highways.

The gist of the evidence for petitioner, some of which was not corroborated and some of which was refuted, is to the following effect. On several occasions members of the public on highways in the downtown section, during daily peak periods or in other emergencies, have requested transportation or have opened the door of petioner's car, when it stopped for traffic or otherwise, and have been transported for hire in violation of law. Similar incidents, in the present war emergency, were claimed by petitioner to have been experienced by owners of most of the cars being operated under public plates.

On a few occasions, particularly in emergencies, certain of the witnesses were unable to obtain taxicab service immediately at the time and place as demanded. On one Sunday morning at the Biltmore Hotel petitioner saw a large number of people waiting, as he presumed, for taxicabs and none was then and there visible, and at Union Station on another occasion he noted a similar condition. Between the hours of midnight or 12:30 and 2 to 3 o'clock in the morning at Exchange Place in the downtown section of Providence a considerable number of persons leaving the cafes and restaurants after they had closed were not able to obtain transportation by taxicabs. The petitioner operated a private stand located on a parking lot on the southerly side of Exchange Place near the location where the last-mentioned demand existed and his cars were kept very busy.

On the other hand, there was testimony presented, in opposition to the granting of petitioner's application, by representatives of the city of Providence, the Yellow Cab Company and Monahan Cab Company, the latter two being owners and operators of taxicabs that were registered under certificates of convenience and necessity previously issued by the administrator.

Such evidence showed, in substance, the following facts: The city objected to the granting of the application for the particular stand described therein. At least half of the people waiting at the Biltmore Hotel and Union Station on the two occasions mentioned by the petitioner were not waiting for taxicabs at all, and the remainder were served and the sidewalks cleared in not over fifteen minutes. There was no long waiting by passengers at either of these places even at peak periods, and no substantial complaints had been made by any of the witnesses or other members of the public to either of the above-mentioned taxicab companies or to the administrator, alleging any unreasonable delay or inadequate taxicab service. On Exchange Place between approximately 12:30 to 2 or 2:30 o'clock in the morning there were not enough taxicabs actually in operation to meet the demand at that particular time and

place, but this was due to unusual war emergency conditions and to efforts of the Yellow Cab Company in particular to conform to General Order No. 20 of the Federal office of defense transportation; and this demand, which was limited as to both time and place, could be satisfied by use of taxicabs already registered, but then inactive, if the administrator would so order. The Yellow Cab Company was ready and willing to do whatever was necessary to put all of their registered and inactive taxicabs in operation, if necessary and so ordered.

The petitioner renews his contentions that the decision of the board is arbitrary and unlawful in that it is based upon matters not in evidence or properly for the board's consideration and also that the evidence in any event clearly required the granting of the application.

[1] The board's original and supplemental decisions, when read together, contain many general and special findings. Such findings are entitled, under the express provisions of the statute, to be considered as prima facie true and are not to be reversed unless they are unlawful or unreasonable or against the weight of the evidence. P.L. 1940, Chap 821, § 1. Breen v. Division of Public Utilities (1937) 59 RI 134, 194 Atl 719. But conversely such findings based upon matters not in evidence or upon considerations that are not proper under the law for the board's determination are not entitled to such weight.

[2] Some of the board's discussion in the original decision appears to involve considerations of a broad discretion claimed for the administrator and a policy established by him and his predecessors to issue no more certificates to operate taxicabs in Providence merely because 282 certificates had been previously issued to the Yellow Cab Company. We pointed out in our earlier opinion that these discussions and assumptions threw some doubt upon whether or not they formed any material basis for some of the board's original findings. As to any established policy of the administrator, we find no direct evidence thereof in the transcript and such a matter, if otherwise proper for consideration, should have been shown by evidence, because the hearing before the board is de novo under the statute. P.L. 1939, Chap 660, § 125, as amended by P.L. 1940, Chap 821, § 1.

[3] As to the discretion claimed for the administrator, it may be that the general assembly intended by this statute to give him some discretion in discharging his duties under the law; but in our opinion this statute, at least in its present form, does not give an exclusive franchise to any operator and does not contemplate that the administrator's discretion should be unlimited. Any policy properly established by the administrator to assist him in discharging his duties under the law must be reasonably related to and be determined by what is conducive to the general public convenience, interest, welfare and protection. See Capaldo v. Public Utility Hearing Board, *supra*, and cases cited. A policy otherwise framed does not thereby become the controlling standard by which to determine whether or not general public convenience and necessity require the issuance of addi-

tional certificates to operate taxicabs.

[4] The evidence here shows that 282 certificates were issued to the Yellow Cab Company by a predecessor of the administrator about 1930; that at no time thereafter were more than 101 taxicabs ever registered and operated by this company; and that the latter number, together with the taxicabs already registered and operated by other owners, were and are adequate to serve the general public convenience and necessity throughout Providence as a whole in all periods and conditions. Manifestly a policy based solely upon the mere issuance, without need, of such a large number of certificates for taxicabs that were never registered and operated in the public service is not reasonable and cannot be substituted for the standard provided by the law. Public service has been held to be the test in granting a certificate of convenience and necessity. Mooney v. Tuckerman (1929) 50 RI 37, 144 Atl 891; Breen v. Division of Public Utilities, *supra*.

Hence, if any of the board's findings, as later clarified, can still be said to materially rely upon the existence of an unlimited discretion, as claimed for the administrator, or upon a policy arbitrarily established as above indicated, such findings are not hereby approved.

On the other hand, the original decision, as later clarified by the board, reveals certain other controlling findings that appear to be independent of the above-mentioned considerations and to have support in the evidence. For our purposes the important and material findings are, in substance and effect, that (1) the petitioner had not established the existence of a general public necessity and convenience requiring the issuance of three new certificates to him; (2) that apart from conditions on Exchange Place the evidence was limited to a comparatively few individuals who were unable to obtain taxicab service immediately at the time and place of their demand; (3) that at Exchange Place the demand for automobile transportation clearly exceeded the number of available taxicabs but only during the hours of approximately 12:30 to 2 or 2:30 o'clock in the morning; and that this demand, in addition to being localized as to time and place, was due to abnormal and temporary war conditions and to the reduction in the number of taxicabs being actually operated at that hour, in order to conform with General Order No. 20 of the regulations of the Federal office of defense transportation; (4) that such demands could be adequately served by taxicabs that were previously registered and operated by the Yellow Cab Company but which were now inactive only because of a desire to aid the war effort by conforming to regulations of the Federal office of defense transportation; and (5) that, if necessary, the Yellow Cab Company was then ready and willing to put all of such registered taxicabs into operation, if ordered and permitted to do so.

An examination of the record shows that there is evidence in support of these findings and we cannot say that such findings and the decision based thereon are arbitrary or unreasonable or that they are against the clear weight of the evidence.

[5] The nub of this case, in our opinion, is whether the board reason-

ably might consider the fact that the Yellow Cab Company had some thirty or more certified and registered taxicabs, which were rendered inactive because of efforts to conform with General Order No. 20 of the regulations of the office of defense transportation, and which were presently available for public service, if ordered into operation by the administrator. We are of the opinion that, in the circumstances appearing in this record, it was competent for the board to consider such facts. It is well established that the director or the board, in determining whether general public convenience and necessity exist, may consider various factors including the present ability of a utility in the field to provide adequate service to meet any particular demand that may appear. See Abbott v. Public Utilities Commission, 48 RI 196, PUR1927C 436, 136 Atl 490.

The evidence here is not disputed that the Yellow Cab Company had thirty or more taxicabs, already registered and previously operated until rendered inactive by the office of defense transportation regulations, and that it was then ready, willing and able to put them into operation, if ordered and permitted to do so. There is no evidence that the administrator would refuse to order them into operation, or that a special permit could not be obtained for their operation, if necessary, from the office of defense transportation, or that such office would refuse any proper application based upon the conditions as they appear in the evidence. In fact, General Order No. 20 of such regulations appears to contemplate just such a possible condition because, in order to save gas and tires during the war emergency, it purports to limit each taxicab registered as of September 1, 1942, to certain maximum mileage, in the absence of a special permit "to meet specific needs or exceptional circumstances, or to prevent undue public hardships." There is also undisputed evidence that the Yellow Cab Company was then ready and willing to put into operation all of its 101 registered taxicabs, if found necessary and ordered to do so by the administrator; and that these, plus the taxicabs already being operated by others, would be entirely ample to serve all particular or localized demands as claimed in the evidence, and also the general demands of the public.

Upon this state of the record and having in mind the weight to be given the board's findings in accordance with the statute, we cannot say that the evidence here requires the conclusion that such findings and decision were clearly arbitrary and unreasonable or were against the weight of the evidence. In our judgment the evidence, as it appears in this record, shows a need for administrative action by the Yellow Cab Company or the administrator or both to correct, through the operation of taxicabs actually registered and presently available, the alleged inadequacies of service that were found by the board to be limited to a particular time and place. What the result might be if the evidence showed, as it does not, that the Yellow Cab Company, acting alone or on order of the administrator, was unwilling or unable to place in operation all its registered taxicabs, if necessary, to correct such alleged inadequacy of service is not

before us on this record and we do not decide.

The appeal of the petitioner is denied and dismissed and the decision of the board, as understood and interpreted by us, is sustained.

CONDON, J., dissenting: I dissent because the board exceeded its jurisdiction. After finding that there was a public need for additional taxicab service at the location where the petitioner desired to establish a taxicab stand, the board denied his petition substantially on the ground of public policy. That was clearly beyond its province. The only question before it was one of fact. And that question was, had the petitioner shown by his evidence that public convenience made it necessary to permit additional taxicab service at the location applied for? If it found that he had shown such need, it was the board's duty to reverse the decision of the administrator and order him to issue the desired certificates. It was no part of its duty to go further, as it did, and weigh questions of public policy, which it conceived might arise if it reversed the administrator.

In my opinion the board clearly found that "public convenience and necessity" had been proved. This is evident from the following language of the board's decision: "We find, and are bound to find, that in and about Exchange Place in the city of Providence between the hours of 12 midnight and 2 A. M. or thereabouts there are large numbers of persons desiring transportation by automobile in excess of that which is available. This could not be better illustrated than by the testimony of Tony Brown, an independent operator of taxicabs, who stated that you could not get a taxicab at 1 o'clock in the morning if fifty cabs were added to those now in operation. There is, therefore, clearly a demand at that location at those times for additional facilities for automobile hire."

Having made that definite finding on the only issue before it, the board then goes on to discuss other matters which persuaded it to sustain the decision of the administrator. While such matters might afford the legislature reasons for legislative action to meet a situation created by the emergency of war, they do not, in my opinion, afford an administrative agency, such as the board or the administrator, grounds for arrogating such authority to itself. In the instant proceeding the board is solely a fact-finding agency of very limited scope, namely, that of finding whether or not the petitioner has established that public convenience requires additional taxicab service. Its finding of such fact is prima facie conclusive upon us, if the weight of the evidence supports such finding, and it is also conclusive upon the board itself.

That the above-quoted finding of the board is supported by the weight of the evidence is put beyond all question by certain parts of the testimony of Charles Keenan, manager of the Yellow Cab Company, which is the holder of almost all the taxicab certificates of public convenience and necessity in the city of Providence and which opposed, before the board and before us, the granting of the instant petition. *"32CQ* Now, Mr. Keenan, do you feel that there is a necessity for more taxicabs in the city of Providence at the present time? *A.* The

orders issued by the O. D. T. would make it necessary. Under ordinary conditions before they came out, I would say 'no.' *33 CQ* I didn't ask you that, Mr. Keenan. At the present time do you feel that there is necessity for more taxicabs? *A.* Basing my answer on normal conditions? . . . *35 CQ* Mr. Keenan, do you feel that at the present time there are enough taxicabs in the city of Providence to take care of the demands of the general public? *A.* Working under O. D. T. restrictions 'no.' . . . *89 CQ* Are you able to take care of all of the patrons in the city of Providence? *A.* Not since the O. D. T. restrictions were placed on us."

The first rule for the guidance of the administrator is to see that the public convenience is served. That is a duty which the statute plainly puts upon him. The same duty rests upon the board in reviewing his decision. The protection of present holders of certificates from the economic effects of additional competition is secondary. The object of the statute is neither to foster monopoly nor to freeze existing competition. Such considerations become relevant only incidentally in determining the primary question whether additional service by another or others will really promote the welfare of the traveling public.

If war regulations of the Federal government have restricted the present holders of taxicab certificates to the operation of so limited a number of taxicabs that they are presently unable to furnish adequate public service, as is evidently the case, and, if such regulations permit other automobiles which are operated for public hire to be used in taxicab service, as is also the case, then there is no sound reason why the administrator should not issue certificates of public convenience and necessity for the operation of such automobiles as taxicabs. Indeed, in such circumstances, I think that it is his duty to do so, provided the petitioner is able to meet all the requirements for the rendering of such taxicab service.

While it may seem harsh and unjust to the present holders of such certificates that others should thus be permitted to furnish the very service which they are prepared to furnish but are prevented from furnishing by the war regulations of the Federal government, there is actually no injustice, although there may be a real economic sacrifice. But, in that respect, their situation is no worse than that of many who, by reason of one war regulation or another, have suffered substantial economic loss. And of course such loss is not to be compared with the loss of life or health which hundreds of thousands have already suffered in this war. The present holders of certificates are, therefore, entitled to no special consideration or protection at the cost of inconvenience to the public merely because their business is, in part, an economic casualty of war. Moreover, neither the board nor the administrator is competent to extend such protection. The scope of their power is limited to the consideration solely of "public convenience and necessity."

It may not be amiss to observe here that, according to the evidence, much of the public inconvenience due to lack of adequate taxicab service in Exchange Place in the post-midnight hours is being borne by men of the

armed services who come to Providence to enjoy a few all too fleeting hours of freedom from military regimen and, who, in many instances, are squeezing all the enjoyment there is to be obtained out of their last free time before they embark upon the great adventure. Who would think, much less talk of any economic loss in the face of that fact? To suffer those men, presently a substantial part of the traveling public in Providence, to be inconvenienced by not authorizing additional taxicab service would, on this record, most certainly be harsh and unjust to them. But aside from any question of injustice to them or to the present holders of certificates, the need for additional taxicab service to serve public convenience having been shown, the authorization of additional service should follow.

For the reasons above set forth, I am, therefore, of the opinion that the board erred in not granting the petition and reversing the decision of the administrator.

NEW YORK SUPREME COURT, APPELLATE DIVISION, THIRD DEPARTMENT

Spring Brook Water Company

v.

Village of Hudson Falls

269 App Div 515, 56 NY Supp2d 722
June 29, 1945

SUBMITTED *controversy upon agreed facts to obtain ruling on question whether Commission approval is required before water company can transfer property to municipality; Commission approval held to be necessary and specific performance of contract of sale denied.*

Consolidation, merger, and sale, § 13 — Necessity of Commission approval — Sale to municipality.

1. Commission authorization is required before a corporation operating a water utility can sell its property to a municipality, even though the Commission has no jurisdiction over rates or service of municipally owned waterworks, p. 316.

Corporations, § 1 — Scope of term — Municipality.

2. The term "corporation," used in a statute regulating the sale of utility property by a corporation to any other person or "corporation," includes a municipal corporation, p. 316.

Consolidation, merger, and sale, § 6 — Jurisdiction of Commission — Over transferor or transferee.

3. The provisions of the Public Service Law requiring Commission con-

sent to a transfer or lease of utility property are designed to regulate the disposition of operating properties by utility companies—not their acquisition by others, and the regulatory power of the Commission in respect to transfers is operative with respect to the transferor rather than the transferee, p. 317.

Service, § 215 — Abandonment — Commission consent.

4. A public utility corporation, having embarked upon a public enterprise and having dedicated its property to the public use and having assumed the obligation to serve the public, cannot cease rendering such service without the consent of the Commission, p. 317.

Consolidation, merger, and sale, § 6 — Jurisdiction of Commission — Purchase price — Service.

5. The Commission has jurisdiction, under the statutory provisions relating to Commission consent to property transfers, to consider the question of public interest as to consumers located outside of a municipality proposing to acquire waterworks, to consider the proposed purchase price, and to pass upon the question whether adequate service at reasonable rates can and will be maintained by the purchaser, p. 317.

Before Hill, P.J., and Heffernan, Brewster, Foster, and Lawrence, JJ.

APPEARANCES: Gibson & Middleworth, of Hudson Falls (Joseph F. Monaghan, of New York city, James Gibson, Jr., of Hudson Falls, and Felix Taubenblatt, of New York city, of counsel), for plaintiff; Edward R. Waite, of Hudson Falls, for defendant; Philip Halpern, of New York city (George H. Kenny, of Albany, and Samuel R. Madison, of Buffalo, on the brief), for Public Service Commission, amicus curiae.

HEFFERNAN, J.: This is a submitted controversy upon agreed facts pursuant to the provisions of §§ 546-548 of the Civil Practice Act. Plaintiff is a domestic corporation and defendant a municipal corporation.

On November 1, 1943, plaintiff and defendant entered into an agreement in writing by the terms of which plaintiff agreed to sell to defendant its water system in the village of Hudson Falls, New York, and defendant agreed to purchase the same. The contract contains a condition that it is subject to the consent, approval, or authorization of any regulatory agency which may have jurisdiction in the premises.

Defendant contends that under the terms of its contract with plaintiff the consent of the Public Service Commission (henceforth called the Commission) must be obtained before the transfer can be consummated. It is plaintiff's position that such consent is unnecessary and that the Commission has no jurisdiction in the premises.

At defendant's request the parties filed a joint petition with the Commission asking its consent to the transfer. In that petition plaintiff asked the Commission to dismiss the application for want of jurisdiction. That motion was denied. Public hearings were held before the Commission and the record was closed on April 18, 1944.

On October 19, 1944, the Commis-

sion denied the joint petition but without prejudice to the submission of a further application for the sale of the water system at a price less than that stipulated in the contract between the parties.

On March 16, 1945, the parties submitted the controversy to this court. Plaintiff is asking the court to direct judgment in its favor for specific performance of the contract. Defendant is asking for a judgment of dismissal on the sole ground that plaintiff has not obtained the Commission's consent to the transfer.

After the cause was submitted to this court the Commission, on its own motion, ordered further hearings to be held. On April 26, 1945, it rendered a decision denying its approval to the transfer on the ground that the same is not in the public interest.

The Commission is not a party to the submission. However it applied to and was granted permission by this court to file a brief and to orally argue the cause as amicus curiae.

[1, 2] The statute under which the parties made application to the Commission for its consent to the transfer is § 89-h of the Public Service Law, the pertinent provisions of which are:

"Transfer of franchises or stocks. 1. No waterworks corporation shall transfer or lease its franchise, works or system or any part of such franchise, works, or system to any other person or corporation or contract for the operation of its works and system, without the written consent of the Commission."

The sole controversy between the parties relates to the construction and interpretation of the quoted provisions of the statute.

Obviously the real issue before us is not between the parties to the submission but between plaintiff and the Commission.

Plaintiff insists that the word "corporation" in the statute means only a private corporation. It seeks to avoid the exercise of regulatory power by the Commission over the transfer of its property solely because the proposed purchaser is a municipal corporation. It concedes that the consent of the Commission would have to be obtained if a transfer were proposed to be made to anyone else. The Commission contends that § 89-h requires its consent upon a sale or lease to anyone.

It should be noted that the Commission has no jurisdiction over rates or service of municipally owned waterworks. Section 89-*l* of Article 4-B of the Public Service Law deprives it of such jurisdiction. The only obligation resting on the municipality under that section is to file with the Commission a copy of the annual report of its division, bureau or department of water.

The Commission however does not rest its claim to regulatory power upon the acquisition of the property by defendant but upon the proposed disposition of the property by plaintiff, which is a waterworks corporation operating under the jurisdiction of the Commission.

Considering all the circumstances we are convinced that plaintiff may not transfer its property to defendant without the consent of the Commission. It seems to us that the term "corporation" used in the statute clearly includes a municipal corporation.

[3] The Public Service Law contains five sections which require the consent of the Commission to a transfer or lease of franchises, works or system, or any part thereof, by designated utility companies: § 89-h (waterworks corporations); § 70 (gas and electric corporations); § 54 (street railroad corporations); § 63 (omnibus corporations); and § 83 (steam corporations).

Each of these sections is similarly phrased. It is apparent upon the face of their provisions that the regulatory power of the Commission in respect to transfers or leases of the works or systems of the utility companies were intended to be operative with respect to the transferor, rather than the transferee. These enactments are designed to regulate the disposition of operating properties by utility companies—not their acquisition by others.

It is unimportant to whom the properties are to be transferred or leased; the vital fact under the statutory provisions is that a public utility company is proposing to part, permanently or under lease, with some or all of its operating properties, and this it may not do "without the written consent of the Commission." Public Service Law, §§ 54, 63, 70, 83, 89-h.

[4, 5] The fundamental question in this case is whether a public utility corporation, having embarked upon a public enterprise and having dedicated its property to the public use and having assumed the obligation to serve the public, can cease rendering such service without the consent of the Public Service Commission.

The transfer sections of the Public Service Law, including § 89-h are a part of the statutory scheme by which rate schedules are to be kept on file, under the supervision of the Public Service Commission (Public Service Law, § 89-c, subdiv. 10), and service continued thereunder until the consent of the Commission has been obtained to a cessation of service. From this standpoint it is immaterial whether the company sells and transfers its property to a municipality or to anyone else. The Commission is entitled to inquire into the question of whether adequate service to the public will be continued after the transfer, or whether sufficient reason exists for an abandonment of service, if service is to be abandoned.

Where an entire plant is proposed to be sold to a municipality, it may be that large numbers of consumers are located outside of the municipality, as in the case at bar. A question of public interest would clearly be presented as to such consumers. Once the transfer is made, the Commission will have no jurisdiction over the service or the rates to be charged to nonresident consumers by the municipality.

Their interests can be protected only at the stage when a transfer to the municipality is proposed. It is clearly the duty of the Commission to inquire as to whether there will be continuance of service to nonresident consumers, of an adequate nature and at reasonable rates. In the present case there are some 200 nonresident consumers. The village, of course, will of necessity establish rates in accordance with the price paid, and if the price is excessive the consumers will have to pay excessive rates.

In a situation like the one before us there is a broad question of public interest as to whether a proposed sale to

a municipality would be beneficial or detrimental to all consumers, including residents of the municipality. If a sale is proposed at a highly excessive price, the municipality will naturally seek to earn a return thereon if the sale is consummated at such price. While it is true the Commission will have no jurisdiction over rates once the municipality takes over the property, the residents of the village are members of the public whose interests may be protected by the Commission in connection with the proposed transfer. It is the function of the Commission to protect the consuming public. All consumers possess a vital interest in a proposed sale to a municipality, for an excessive price may result in an increase of their rates, which would be beyond the power of the Commission to regulate. Furthermore, the adequacy of service is a matter of public conern. The Commission manifestly should have power at the time of the sale to pass upon the question of whether adequate service at reasonable rates can be and will be maintained by the purchaser, whether it be a municipality or anyone else.

From what has been said it is our conclusion that judgment should be entered in favor of defendant and against plaintiff denying specific performance of the agreement, without costs.

Judgment granted in favor of defendant and against plaintiff denying specific performance of the agreement, without costs. All concur.

MARYLAND PUBLIC SERVICE COMMISSION

Re The DeLuxe Cab Company of Baltimore City, Incorporated

Case No. 4695, Order No. 41446
October 4, 1945

APPLICATION *for permits for operation of taxicabs; application dismissed.*

Certificates of convenience and necessity, § 96 — To whom granted — New taxicab company.

Taxicab permits should not be granted to a newly organized corporation, not operating any taxicab service and which owns no cabs, when regular and long-established taxicab companies are ready and able to supply adequate service as soon as war restrictions on industry are lifted.

APPEARANCES: Dallas F. Nicholas, for The DeLuxe Cab Company of Baltimore City, Inc.; James J. Lindsay, for the Association of Independent Taxi Operators, Inc., Sun Cab Company, Incorporated, and the

Black and White Taxicab Association, Incorporated; Nicholas G. Penniman, 3rd, for Belle Isle Cab Company, Incorporated, and The Yellow Cab Company; Nathan Hamburger, for Wm. H. Rothman, Irvin K. Edelstein, and Max Rothman, trading as Greyhound Cab.

By the COMMISSION: This is an application for twenty-five new taxicab permits filed by The DeLuxe Cab Company of Baltimore City, Inc., a newly organized Maryland corporation not now operating any taxicab service.

Pursuant to joint resolution of the general assembly of Maryland, this Commission, on June 29, 1937, after an investigation into conditions surrounding the taxicab situation in Baltimore, passed a resolution stating that in its considered judgment the maximum number of taxicabs required by the public welfare, convenience, and necessity, was 1,000. The Commission thereupon granted sufficient additional permits at that time to bring the total number of outstanding permits up to 1,000. Since that time no additional permits have been issued for the operation of cabs in the city of Baltimore and its environs, although more than 800 applications for such permits have been filed with the Commission.

Since 1937 the Commission has continuously conducted its own investigation and applied its own observation as to the taxicab situation in Baltimore. It is, and has been, fully aware of the great influx of war workers into the city, and the large number of transients moving in and out of Baltimore during the war period. It also is, and has been, fully aware that in some sections of the city, and particularly at certain congested points, taxicab service has not been satisfactory during the war years. On the other hand, the Commission is, and has been aware that a great many of the taxicabs for which permits have been issued are not now in service, due to the lack of new automobile manufacture, shortage of critical parts, shortage of manpower, and other conditions which have seriously affected the taxicab industry, along with other civilian pursuits during the war years.

The Commission is informed, and believes, that this situation will rapidly improve with the release of new automobiles to the taxicab industry and with the out-migration of many war workers from the Baltimore area.

Because so many of the authorized taxicabs in Baltimore have been out of service during the war the Commission has felt that it is not only unnecessary, but highly unwise, to grant any additional permits for cabs during this period.

When the present application was filed for twenty-five additional cab permits, this Commission rejected it, as it had all of the 800 other applications, on the basis of the aforementioned resolution of 1937 placing a ceiling of 1,000 cabs for Baltimore. Later, after a court suit was instituted by this applicant, the Commission reconsidered and decided to hold a hearing in which it would hear not only the sponsors of this application but any other interested parties, on the general question of whether the ceiling of 1,000 cabs should be increased. A hearing was duly held and testimony taken, not only from this applicant, but from representatives of a

number of the large taxicab owners in the city, as well as outside persons specially qualified to give the Commission the benefit of their experience and advice.

The testimony disclosed that Baltimore, with 1,000 cab permits outstanding, has more taxicabs per capita than any of the twenty largest cities in the United States except New York, Washington, Boston, and New Orleans. In at least two of these cities, and probably three, the transient population which is largely dependent upon taxicab service, is considerably greater than Baltimore. The figures show that Baltimore, as of 1940, had approximately one taxicab for each 859 residents. The nearby city of Philadelphia has only one cab for each 1,718 members of its population. Cleveland, a city roughly the same size as Baltimore, has but one cab for each 2,137 persons. The city of Los Angeles has but one cab for each 2,796 persons. Uncontradicted outside expert testimony was produced before us that 1,000 taxicabs is sufficient for a city the size of Baltimore, in normal times. A greater number, it was disclosed, would result in excessive competition among drivers for fares, to the point where the public interest and welfare would be prejudiced and the whole service suffer.

The testimony further disclosed that of the permits for 1,000 taxicabs now outstanding, only about 600 of such cabs have actually been in service at any one time during the war years. Many taxicabs have simply worn out from overuse and there have been no replacements. Others have been laid up for long periods for lack of essential parts, shortage of man power, inability to obtain tires, gasoline rationing, and for other reasons, all of which may be attributed to the war.

On the basis not only of the testimony, but also of the Commission's continuing investigation and observation, the conclusion is reached that in normal times 1,000 taxicabs is sufficient to supply the reasonable needs of the people of Baltimore. The war has now ended and new taxicabs will soon be available in sufficient quantities to supply the needs of the Baltimore operators. Many drivers, repairmen, and other personnel of the industry, who have been absent in the armed forces, are now returning to their former positions, and gasoline rationing is ended. Some of the war workers who immigrated to Baltimore have now departed, although many of them may be expected to remain and become assimilated into our population. Therefore, normal times, at least so far as taxicab service is concerned, seem to be just around the corner.

We feel it would be a mistake, therefore, to grant twenty-five new taxicab permits to a newly organized group which has not heretofore been in the business, and which owns no cabs at the present time, when the regular and long-established taxicab companies in the city are ready and able to supply adequate service just as soon as the remaining restrictions on the industry are lifted.

For the above reasons, an order will be passed in accordance with the conclusions reached herein.

Industrial Progress

Selected information about products, supplies, and services offered by manufacturers. Also announcements of new literature and changes in personnel.

New Combustible Gas Alarm System Announced by Davis

DAVIS EMERGENCY EQUIPMENT COMPANY, INC., 45 Halleck street, Newark 4, New Jersey, manufacturers of safety equipment and special instruments, have introduced the new Davis combustible gas alarm system, remote head type, designed to: (1) detect the presence of combustible vapor and/or gas; (2) give an audible signal before mixture with air becomes dangerous; and (3) control appliances, such as shutting down machines, starting ventilating, etc.

Approved by the Associated Factory Mutual Laboratories, this new system can analyze combustible gases in any range to 100 per cent. It visibly and audibly indicates the approach of such gases to dangerous limits, giving warning before a fire or an explosion could take place.

Blaw-Knox Booklet Ready

CONCLUSIONS of prefabricated power piping engineers regarding the design of piping layouts for flexibility have been published in a booklet entitled "Blaw-Knox Functional Spring Hangers and Vibration Eliminators," which may be obtained from the Blaw-Knox Company, Pittsburgh, Pennsylvania, upon application.

The booklet gives many details concerning standard and special types and sizes of functional spring hangers and vibration eliminators, with instructions for their installation, and engineering information which will be of help when adoption of this type of support is under consideration.

G-E Fuse Catalog Available

A NEW 32-page catalog on General Electric Company's cartridge and plug fuses has just been published by G-E's appliance and merchandise department at Bridgeport, Connecticut. This catalog contains full specifications on all fuses in the General Electric line and much other fuse information.

Detailed descriptions are given of the construction of G-E nonrenewable and renewable cartridge fuses, Silvend fuses, and Pyrex plug fuses. The different parts of all these fuses are illustrated and described, and the purpose of each part is also outlined.

In addition to the presentation of G-E fuses in the catalog, there are three chapters of general interest. One deals with the operation of fuses and contains a technical description of short circuits, normal overloads, abnormal overloads, time-current characteristics of fuses, and high interrupting capacity. There is also a description given in this chapter of the tests General Electric makes on fuses at its fuse laboratory in Schenectady.

The other two chapters deal with fuse history and fuse care, respectively. In the first of these chapters, fuse history is traced from the beginning of the electrical era. Photographs are shown of early wire fuses and early plug fuses. The other chapter, about the care and maintenance of fuses, gives practical suggestions for keeping fuses in good condition.

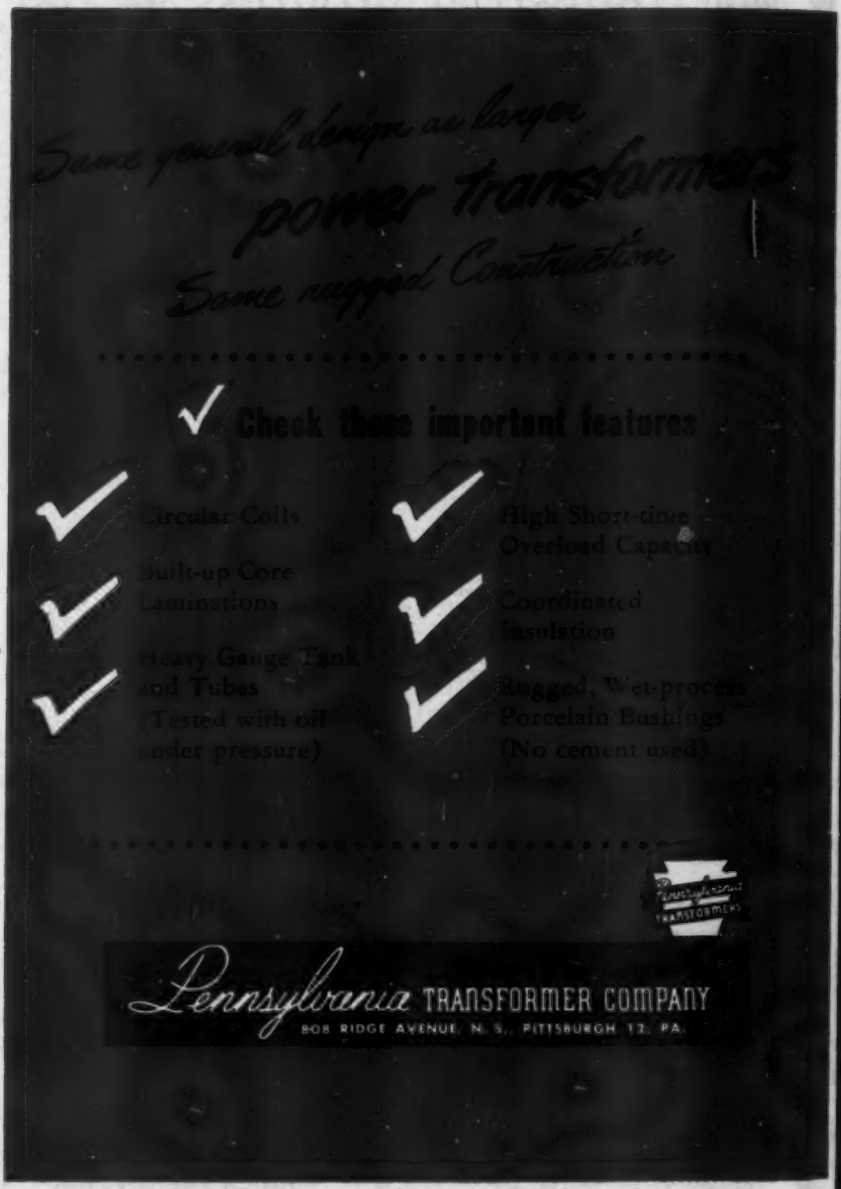
Indoor Climate Institute Elects New Officers

AT the 2nd annual meeting of the Indoor Climate Institute recently held in Detroit, T. A. Crawford, general manager of Timken Silent Automatic Division, Timken-Detroit Axle Company, was elected president succeeding Paul B. Zimmerman, who has held the office since inception of the institute. L. N. Hunter of The National Radiator Company was made first vice president; R. E. Moore of Bell & Gossett Company, and E. N. McDonnell of McDonnell and Miller, were reëlected secretary and treasurer, respectively.

Joins Proctor Electric

LT. COL. C. G. DUY, JR., has joined Proctor Electric Company, Philadelphia, as advertising and sales promotion manager, it has been announced by Robert M. Oliver, vice president. In this capacity, he will be responsible for the planning and directing of all Proctor advertising; the educational training of wholesale and retail sales personnel; planning and conduct of sales meetings and demonstrations; merchandise presentation and informative labeling of products; and general consumer education concerning them.

Lt. Col. Duy comes to Proctor with a record of over fourteen years of utility and appliance sales, advertising, and promotional experience. He served in the army air corps from 1942 up to the present time. Prior to entering the armed forces, Lt. Col. Duy spent six years at Westinghouse Electric Corporation in advertising,



sales promotion, and sales development executive positions. Before joining Westinghouse, he was with the Pennsylvania Power & Light Company for eight years, serving as a divisional sales director during the last four.

Westinghouse to Expand New Jersey Operation

To allow for expansion of warehouse, service, and manufacturing facilities of the Newark manufacturing and repair department of the Westinghouse Electric Corporation, plans to acquire 26 acres of land in Hillside for a building to cost in excess of a million dollars were announced by L. D. Canfield, manager of the Eastern district manufacturing and repair department.

Activities at the new plant will include manufacturing of switchboards, control, panel boards, and repairing of motors, transformers, generators, and other electrical equipment for utilities, railroads, and industrial corporations.

Thomas A. Edison Centennial

Formation of the Thomas A. Edison Centennial Committee which will conduct the international observance of the 100th anniversary of the birth of the late Thomas A. Edison on February 11, 1947, was announced recently by Edison Pioneers, an association founded in 1918 by the men who worked with him. Honorary chairmanship of this committee has been accepted by Henry Ford, long a close associate of the inventor.

Charles F. Kettering, president of the American Association for the Advancement of Science and chairman of the National Inventors Council, will be chairman of the Edison Centennial Committee. Specific plans for the centennial will be revealed after Mr. Kettering's committee is set up.

"Gas Range of Tomorrow" Design Contest

A contest for the design of the "Gas Range of Tomorrow," involving sixteen cash awards totaling $18,000, is being conducted by the American Stove Company, S. E. Little, vice president, has announced. It will be sponsored by *Architectural Forum*, with George Nelson, of the American Institute of Architects, as professional advisor.

Reason for the competition is effectively outlined in the attractive rules booklet which has been prepared by its sponsors.

The contest imposes few limitations on the designs. In addition to the over-all design and appearance, there is also the problem of new features to be incorporated in the range, which make the job of cooking more convenient.

Designs may show a radical departure from

Cooler Cables!

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OM LABORATORY TESTS lasting more than two ars comes proof of the superior heat-dissipating ities of Transite Ducts.

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existing practice, or they may involve only slight modifications. If desired, a series of designs may be submitted.

The contest is open to all residents of the United States, with the exception of the American Stove Company, its subsidiaries, its advertising agencies, *The Architectural Forum*, and the families of such employees, or employees of other range manufacturers.

The cash awards are broken down as follows: First prize, $5,000; second prize, $3,000; third prize, $2,000; three prizes of $1,000 each; and ten prizes of $500 each. The contest opened in November and closes March 1, 1946.

The competition booklet, which also incorporates the basic technical data required in initiating a design, may be obtained free of charge by writing to George Nelson, AIA c/o *The Architectural Forum*, department P-3, Empire State building, 350 Fifth avenue, New York 1, New York, mentioning the Magic Chef design contest.

New Coffing Hoist Catalog

THE Coffing Hoist Company of Danville, Illinois, announces the publication of a new catalog of its products, which include ratchet lever hoists, safety load binders, utility maintenance tools, electric hoists, electric hoist accessories, spur gear chain hoists, differential chain hoists, I-beam trolleys, ratchet lever hoist parts, load binder parts, and spur gear hoist parts. Copies of the catalog may be obtained from the company.

THE TENNESSEE VALLEY AUTHORITY has openings for people who are interested in power supply work, and rural, commercial and industrial electrical development activities. The basic entrance salaries for the positions will range from $2400 to $4300 a year depending upon the position which candidates may be qualified to fill by reason of their training and experience.

Candidates should be generally qualified through formal education in the field of electrical, mechanical, agricultural, or hydraulic engineering or public utility economics, or a combination of education and experience in one or more of these fields. In addition, for positions at the higher salary levels, candidates should have experience along the lines indicated above. It is desirable that candidates for electrical development work have a technical background, practical electrical utility experience and qualifications for personal contacts with individual customers, officials of local electric systems, and others.

Those who are interested in these positions should write the Personnel Department, Tennessee Valley Authority, Knoxville, Tennessee, requesting an application form.

PROFESSIONAL DIRECTORY

• This Directory is reserved for engineers, accountants, rate experts, consultants, and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, design, and construction. » » »

PROFESSIONAL DIRECTORY

(continued)

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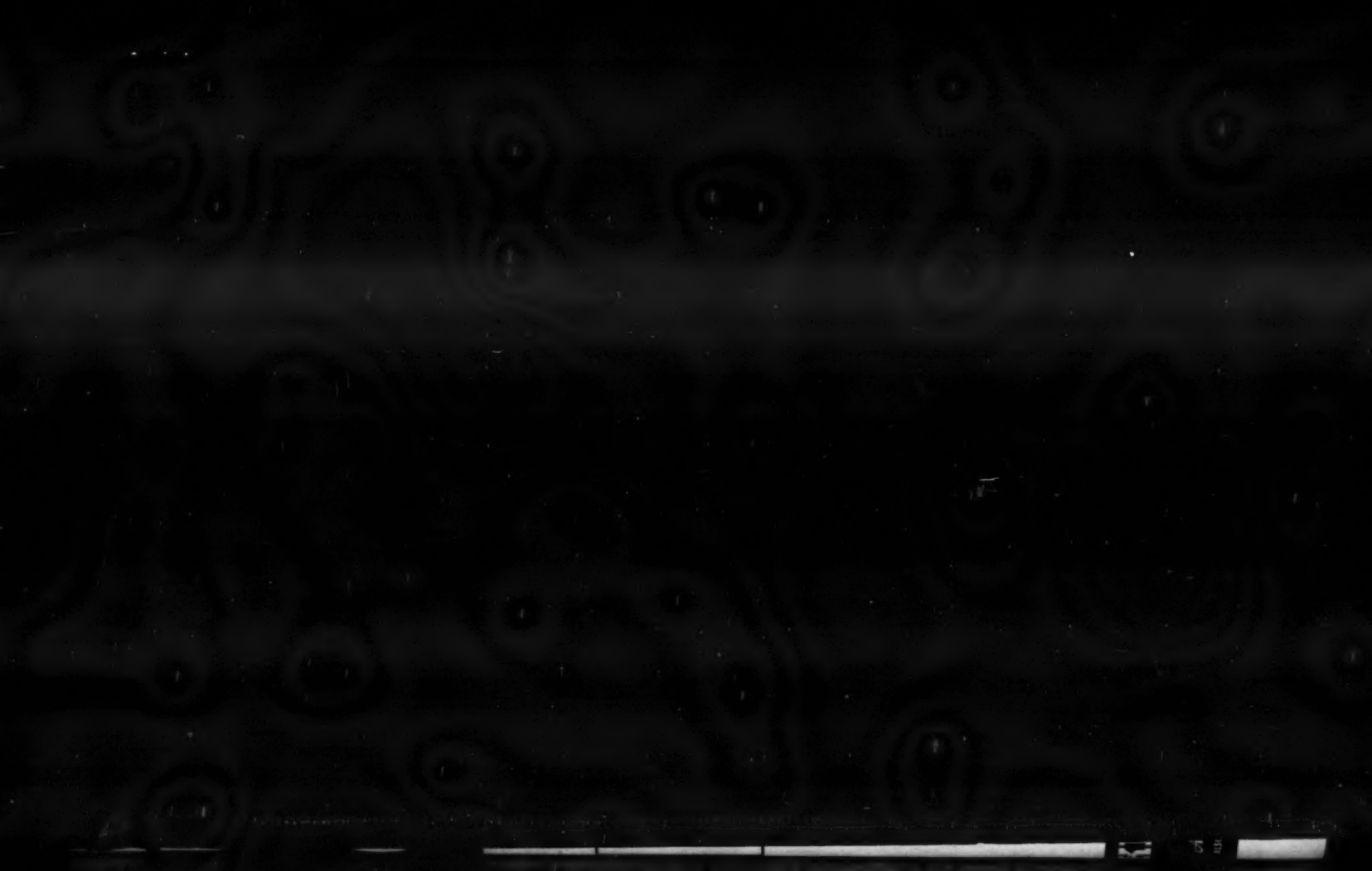

Winter Air Conditioning!

— what are you doing to stimulate this market as an important load builder in postwar?

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The motor driven furnace blower, a necessary part of every winter air conditioning installation, requires, depending upon its size, 200 to 350 KWH annually.

The residential warm air heating and air conditioning industry will be a very potent force in building bigger domestic peacetime loads for YOU and other utility companies.

Taking the first five years of postwar, research and surveys by our publication, AMERICAN ARTISAN indicate an annual market for residential winter air conditioning at least 70% greater than in any prewar year.

In view of this highly promising outlook, both manufacturers and dealers are planning — many starting now — extensive publicity and sales promotional campaigns. You, too, can help!

May we suggest you allocate, during the months ahead, a portion of your consumer advertising (newspaper, radio or both) to "Winter Air Conditioning in the Home" — and thereby further stimulate this very important market for your product, ELECTRICITY!

Our new 84-page book, "The Residential Heating Market," will give your merchandising men complete data covering the territories in which you operate. One copy mailed with our compliments — write us today!

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Don't let your Substations
Tie you dow

Here's another example of the *greater adaptability to changing needs* that you derive from standardization and repetitive manufacture of power apparatus.

An inherent advantage of the unit substation is that it provides a true *building-block* approach to the problem of meeting expanding power requirements. Initially a single unit may be installed. Identical units can then be added as needed, interconnected to form a combination as economical and efficient as if the whole had been designed as one.

With unit substations, there is no problem of substation obsolescence—due to feeder-circuit-breaker interrupting ratings becoming in quate—as connected transformer capac increased. What's more, it's relatively s to relocate one or more unit substations, sh loads shift to other areas.

Whether tomorrow's loads are easily casted or highly unpredictable, it will pay to base your plans on these blocks of station capacity. Ordered "out of the cat and built by repetitive manufacture, they a practical way to get the most from su investment. *Apparatus Dept., General El Company, Schenectady 5, N. Y.*

Duplex unit substation—consists of two transformer sections, two combination transformer secondary and feeder power circuit breakers, and a tie circuit breaker that is normally open. Should one incoming line or transformer drop out, its secondary breaker will immediately open, and the tie breaker will automatically close. This provides two independent paths of power supply to each outgoing feeder. Various methods of linking two or more duplex units raise reliability levels even higher.

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